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No. 84-510

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ASPEN SKIING COMPANY,

Petitioner,

v.

ASPEN HIGHLANDS SKIING CORPORATION,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari filed on 9/28/84

Writ of Certiorari granted on 12/3/84

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The opinion and judgment of the United States Court of Appeals for the Tenth Circuit have been omitted in printing this appendix because they appear on the following pages of the appendix to the printed Petition for Certiorari:

Opinion, dated July 13, 1984 ..... 1a

Judgment, dated July 13, 1984 ..... 40a

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

8/1/79--Complaint filed by Plaintiff Aspen Highlands Skiing Corporation in the United States District Court for the District of Colorado.

9/11/79—Answer of Defendants Aspen Skiing Corporation, Buttermilk Mountain Skiing Corporation, and Snowmass Skiing Corporation.

1/26/81—Amended Complaint filed.

3/11/81—Answer to Amended Complaint filed.

6/1/81—Jury trial commenced.

6/19/81—Verdict. Special Interrogatories to Jury. Judgment of the District Court entered.

7/15/81—Hearing on Motion for Entry of Permanent Injunction. Injunction order entered.

7/24/81—Minute Order denying Defendants' Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial or, in the Alternative, to Alter or Amend the Judgment. Notice of Appeal by Defendants.

8/4/81—Written Injunction filed.

8/5/81—Notice of Cross-Appeal by Plaintiff.

1/28/82--Appeal and Cross-Appeal dismissed without prejudice by the United States Court of Appeals for the Tenth Circuit, because trial judgment not finalized by award of attorney's fees.

2/10/82—Judgment of the District Court, awarding attorney's fees. Judgment of 6/19/81 amended accordingly.

3/3/82—Minute Order denying Defendants' renewed Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for a New Trial or, in the Alternative, to Alter or Amend the Judgment.

3/30/82—Notice of Appeal by Defendants.

4/2/82—Order substituting Aspen Skiing Company as a party in the action in place of Defendants Aspen Skiing Corporation, Buttermilk Mountain Skiing Corporation, and Snowmass Skiing Corporation.

4/5/82—Notice of Cross-Appeal by Plaintiff.

11/15/82—Appeal and Cross-Appeal submitted on briefs and oral argument to the United States Court of Appeals for the Tenth Circuit.

7/13/84—Opinion filed by the Court of Appeals. Judgment affirmed and remanded for determination of fees and costs.

7/31/84—Stay of Mandate until 9/2/84 pending application for certiorari.

8/28/84—Stay of Mandate until 10/2/84 pending application for certiorari.

9/28/84—Petition for writ of certiorari filed by Substituted Appellant and Cross-Appellee Aspen Skiing Company.

12/3/84—Writ of Certiorari granted by U.S. Supreme Court.

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-Z-1012

ASPEN HIGHLANDS SKIING CORPORATION,
a Delaware corporation,

Plaintiff,

v.

ASPEN SKIING CORPORATION, a Delaware corporation,
BUTTERMILK MOUNTAIN SKIING CORPORATION,
a Colorado corporation and
SNOWMASS SKIING CORPORATION, a Colorado corporation,

Defendants.

AMENDED COMPLAINT

Plaintiff, by and through its attorneys Ireland, Stapleton & Pryor, P.C., for its amended complaint, alleges as follows:

JURISDICTION AND VENUE

1. This action is commenced under Section 4 of the Clayton Act (15 U.S.C. § 15) for violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1,2) for damages resulting from such violations and for injunctive relief to prevent the continuation of such violations.

2. Jurisdiction of this court is founded upon 15 U.S.C. §§ 4 and 15 and 28 U.S.C. § 1337.

3. Each Defendant maintains an office, transacts business and is found in Colorado; most of the unlawful acts in connection with and pursuant to the combinations, agreements, conspiracies, or monopoly hereinafter described took place within Colorado; the illegal activities alleged herein had, and continue to have effects within Colorado, and the interstate trade and commerce described herein is partially carried on within Colorado.

PARTIES

4. Plaintiff Aspen Highlands Skiing Corporation ("Plaintiff" or "Aspen Highlands") is a corporation organized and existing under the laws of Delaware, with its principal place of business in Aspen, Colorado. It operates the Aspen Highlands Ski Area in Aspen, Colorado.

5. Defendant Aspen Skiing Corporation ("Ski Corp.") is a corporation organized and existing under the laws of Delaware, with its principal place of business in Aspen, Colorado. It operates the Aspen Mountain Ski Area in Aspen, Colorado. Since March of 1978, Defendant Aspen Skiing Corporation has been a wholly-owned subsidiary of Twentieth Century-Fox Film Corporation, a Delaware corporation.

6. Defendant Buttermilk Mountain Skiing Corporation ("Buttermilk") is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business in Aspen, Colorado. It is a wholly-owned subsidiary of Defendant Aspen Skiing Corporation, and operates the Buttermilk Mountain Ski Area at Aspen, Colorado.

7. Defendant Snowmass Skiing Corporation ("Snowmass") is a corporation organized and existing under the laws of the State of Colorado, with its principal place of business in Aspen, Colorado. It is a wholly-owned subsidiary of Defendant Aspen Skiing Corporation, and operates the Snowmass Ski Area near Aspen, Colorado.

NATURE OF TRADE AND COMMERCE INVOLVED

8. Aspen Highlands, Ski Corp, Buttermilk and Snowmass are engaged in the business of providing downhill skiing services including, but not limited to, the sale of ski lift tickets and the provision of downhill skiing lessons, and related services.

9. In conducting these businesses Aspen Highlands, Ski Corp, Buttermilk and Snowmass and ARI substantially affect interstate commerce in the following ways:

(a) Each purchases materials and supplies necessary to conduct their business from outside the State of Colorado;

(b) each conducts advertising campaigns on a national basis to attract tourists from outside of the State of Colorado;

(c) a substantial number of the tourists purchasing such downhill skiing services travel from outside of the State of Colorado;

(d) a substantial portion of those tourists travel on commercial buslines, airlines, or other means of interstate transportation;

(e) each utilizes the United States mail as well as interstate telecommunications for the purpose of conducting its business;

(f) Aspen Highlands, Ski Corp, Buttermilk and Snowmass enter into commission agreements with tour operators located outside of the State of Colorado for the sale of their ski lift tickets and other downhill skiing services; and

(g) Aspen Highlands, Ski Corp., Buttermilk and Snowmass lease property from the United States Forest Service upon which portions of their downhill skiing facilities operate.

FACTUAL ALLEGATIONS

10. Downhill skiing in Aspen, Colorado is recognized by consumers of downhill skiing services as unique when compared to similar areas throughout the United States and even the world. The provision of downhill skiing services in Aspen, Colorado is a multi-million dollar business. Consumers of downhill skiing services who are temporarily or permanently located or residing in the area of Aspen,

Colorado, do not generally purchase such services outside of said area.

11. In providing downhill skiing services at Aspen Mountain, Buttermilk Mountain, and Snowmass Mountain, Ski Corp, Buttermilk and Snowmass control 80-85% of the downhill skier visits in the Aspen, Colorado area.

12. In providing downhill skiing services at Aspen Highlands, Plaintiff has only approximately 15% of the downhill skier visits in the Aspen, Colorado area.

13. Commencing in the early 1960's, Aspen Highlands, Ski Corp, Buttermilk and Snowmass cooperated in the provision of a joint reciprocal ticket plan ("joint four-area ticket") whereby the customer could buy tickets which would be honored by Ski Corp, Buttermilk, Snowmass and Aspen Highlands at all of their Aspen-area downhill skiing facilities. Said joint four-area ticket was offered by Ski Corp, Aspen Highlands, Buttermilk and Snowmass during the 1960's. In approximately 1972, Ski Corp, Aspen Highlands, Buttermilk and Snowmass again provided a joint four-area ticket which continued until 1974.

14. In February, 1974, Aspen Highlands, Ski Corp, Buttermilk and Snowmass entered into a joint venture agreement for the purposes, *inter alia*, of organizing Aspen Reservations, Inc. ("ARI"), a central reservation service for the Aspen, Colorado area, and for the marketing of a joint four-area ticket. Through the vehicle of ARI, Aspen Highlands, Ski Corp, Buttermilk and Snowmass continued to offer the joint four area ticket in the Aspen, Colorado area from 1974 through April of 1977.

15. On March 24, 1977, Aspen Highlands and Ski Corp sold their interest in ARI to Aspen In Advance, Inc. which continued operating the central reservation service in the Aspen, Colorado area.

16. Aspen Highlands, Ski Corp, Buttermilk and Snowmass continued to provide a joint four-area ticket in the

Aspen, Colorado area for the 1977-78 ski season. Ski Corp, Buttermilk and Snowmass also offered, for the first time, a three-area, six-day ticket which competed with the joint four-area ticket.

17. In May of 1978, Ski Corp, Buttermilk and Snowmass agreed and communicated to Aspen Highlands that they would not participate with Aspen Highlands in a joint four-area ticket unless the net revenues would be allocated on the basis of 12.5% to Aspen Highlands and 87.5% to Ski Corp and its subsidiaries. During the 1977-78 season, the revenues had been allocated on a basis of 15% to Aspen Highlands and 85% to Ski Corp and its subsidiaries. In all previous years in which the joint four-area ticket was offered by Ski Corp, Buttermilk, Snowmass and Aspen Highlands, the parties had agreed to divide revenues on the basis of actual usage at each area. For the 1974-75, 1975-76 and 1976-77 seasons, Aspen Highlands' share of those revenues ranged between 18.5% and 13.4%.

18. Upon information and belief, the agreement between and proposal by Ski Corp, Buttermilk and Snowmass to limit Aspen Highland's share of the revenues on the proposed four-area six-day ticket to 12.5% without regard to the actual usage at each area would artificially increase the market share of Ski Corp, Buttermilk and Snowmass for skier days and prevent Aspen Highlands from reasonably competing in the market.

19. As a result of the concerted refusal to deal with Aspen Highlands on a reasonable basis by Ski Corp, Buttermilk and Snowmass, there was no joint four-area ticket offered for the 1978-79 ski season. However, Ski Corp, Buttermilk and Snowmass again offered a three-area, six-day ticket for the 1978-79 ski season.

20. Upon this refusal to deal with Aspen Highlands by Ski Corp, Buttermilk and Snowmass, Aspen Highlands developed and offered its own four-area, six-day package known as Four Mountain Adventure Pack ("Highlands'

Adventure Pack") which provided the purchaser with three days downhill skiing at Aspen Highlands and with three coupons each with a value of $15.00. Said coupons were designed in such a way that they could either be redeemed for cash or exchanged for ski tickets for use at any of the four ski areas in the Aspen, Colorado area, including those controlled by Ski Corp. Highlands has offered a similar ticket for the 1979-80 and 1980-81 ski seasons.

21. Despite the fact that the Highlands' Adventure Pack would bring additional revenue to Ski Corp and its subsidiaries, Ski Corp, Buttermilk and Snowmass, in concert, refused to cooperate in promoting said ticket and in fact, during the 1978-80 ski season, refused to accept the coupons provided with that ticket when they were presented by skiers at Ski Corp mountains. Such a skier desiring to ski at Ski Corp mountains would first have to redeem the coupons for cash and then buy Ski Corp tickets with that cash.

22. In May of 1979, Aspen Highlands again requested that Ski Corp, Buttermilk and Snowmass participate with it in a joint four-area, six-day ticket with revenues to be allocated to reflect actual use at each area. Ski Corp, Buttermilk, and Snowmass, in concert, again refused to participate in the offering of such a joint four-area ticket and continued to offer a three-area, six-day lift ticket for the 1979-80 ski season.

23. For every ski season from 1978-79 until the present, the marketing strategy, and particularly the promotion of the three-area ticket, used by Ski Corp, Buttermilk and Snowmass has been designed to preclude, and, in fact, has precluded Aspen Highlands from a substantial portion of the market it enjoyed in the 1977-78 and prior ski seasons.

24. As a consequence of the conduct of Ski Corp, Buttermilk, and Snowmass as alleged herein, Aspen High-

lands has been substantially foreclosed from effective competition in a significant portion of the skiing market, consumer choices have been curtailed, and competition has been lessened.

FIRST CLAIM FOR RELIEF
(Sherman Act, §2—Monopolization)

25. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24 above as if set forth fully herein.

26. At all times relevant herein, Ski Corp and its subsidiaries have willfully acquired and/or maintained a monopoly in the sale of skiing services in the Aspen, Colorado area generally and in the sale of multi-area ski lift tickets in the Aspen, Colorado area specifically.

27. Ski Corp and its subsidiaries have improperly and illegally misused the monopoly power in violation of Section 2 of the Sherman Act by:

(a) Refusing to deal with Aspen Highlands in offering a joint four-area lift ticket whereby revenues are allocated on the basis of actual use by each area for the 1978-79 and subsequent ski seasons;

(b) refusing to deal with Aspen Highlands in regard to the promotion and operation of the Highlands Adventure Pack tickets for the 1978-79 and subsequent ski seasons;

(c) marketing its multi-day, multi-area tickets so as to induce ski customers in the Aspen area to deal exclusively with Ski Corp and its subsidiaries and thereby preclude Aspen Highlands from a substantial portion of the market it had previously enjoyed.

28. Upon information and belief, said conduct by Ski Corp, and its subsidiaries, outlined in paragraph 27 above, was carried out with the purpose and intent of foreclosing and eliminating Aspen Highlands from a substantial por-

tion of the downhill-skiing-services market and the multi-area lift ticket market in the Aspen, Colorado area.

29. As a consequence of the foregoing, Aspen Highlands has been damaged through loss of revenue and profits in its downhill skiing services business and through its added expenses in marketing and promoting its own four-area, six-day ticket without the cooperation of Ski Corp in an amount not yet determined.

30. Upon information and belief, said injury and damage will be recurring and ongoing for each ski season that a joint four-area ticket is not offered, leaving Aspen Highlands no adequate remedy of law and thereby making injunctive relief appropriate.

SECOND CLAIM FOR RELIEF
(Sherman Act, §2—Attempt to Monopolize)

31. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24, 27, 28, 29 and 30, as if set forth fully herein.

32. Ski Corp and its subsidiaries have attempted to monopolize the market for downhill skiing services and multi-area lift tickets in the Aspen, Colorado area creating a dangerous probability of success in achieving that monopoly in violation of Section 2 of the Sherman Act through the means set forth in paragraph 27 above.

33. Said conduct was carried out with the purpose and intent set forth in paragraph 28 above.

34. The foregoing has injured Aspen Highlands as set forth in paragraph 29 above.

35. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 30 above.

THIRD CLAIM FOR RELIEF
(Sherman Act, §2—
Combination and/or Conspiracy to Monopolize)

36. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24, and 29 and 30 as if set forth fully herein.

37. Ski Corp, Buttermilk and Snowmass "have held themselves out" to the skiing public as independent competitors.

38. Ski Corp, Buttermilk and Snowmass and other unknown persons have combined and/or conspired to monopolize the sale of multi-area ski lift tickets in the Aspen, Colorado area in violation of Section 2 of the Sherman Act through their concerted actions of:

(a) Refusing to deal with Aspen Highlands in offering a joint four-area lift ticket whereby revenues are allocated on the basis of actual use of each area for the 1978-79 and subsequent ski seasons;

(b) refusing to deal with Aspen Highlands in regard to the promotion and operation of the Highlands Adventure Pack tickets for the 1978-79 and subsequent ski seasons;

(c) marketing its multi-day multi-area tickets so as to induce ski customers in the Aspen area to deal exclusively with Ski Corp. and its subsidiaries and thereby preclude Aspen Highlands from a substantial portion of the market it previously enjoyed.

39. Upon information and belief, said combination and/or conspiracy to monopolize the sale of downhill skiing services and multi-area ski lift tickets in the Aspen, Colorado area was carried out with the purpose and intent of foreclosing and eliminating Aspen Highlands from a substantial portion of the downhill-skiing-services market and the multi-area lift ticket market in the Aspen, Colorado area, and of monopolizing said market.

40. The foregoing has injured Aspen Highlands as set forth in paragraph 29 above.

41. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 30 above.

FOURTH CLAIM FOR RELIEF
(Sherman Act, §1—Restraints of Trade)

42. Aspen Highlands incorporates the allegations contained in paragraphs 1 through 24, 27, 29 and 30, as if set forth fully herein.

41. Ski Corp, Buttermilk and Snowmass have entered into contracts, combinations, and/or conspiracies with each other and with other unknown persons resulting in restraints of trade in violation of Section 1 of the Sherman Act as more specifically alleged in paragraph 27 above.

42. The foregoing has injured Aspen Highlands as set forth in paragraph 29 above.

43. The foregoing has left Aspen Highlands with no adequate remedy of law as set forth in paragraph 30 above.

WHEREFORE, Plaintiff requests the following relief:

1. That this court enter judgment against Ski Corp, Buttermilk and Snowmass jointly and severally, and in favor of Aspen Highlands for damages in an amount not yet determined resulting from Defendants' violations of the Sherman Act. Insofar as damages incurred as a result of Defendants violations may continue during the time of this litigation, Plaintiff requests that it also be awarded the amount of those damages.

2. That the court award interest on all damages from the date of accrual thereof and treble the amount of all damages and award Plaintiff its litigation costs and fees and reasonable attorney's fees, pursuant to Section 4 of the Clayton Act.

3. That this court grant injunctive relief against Ski Corp for its violations of the Sherman Act as follows:

(a) Require Ski Corp to divest two out of its current three downhill skiing facilities in Aspen, Colorado area;

(b) permanently enjoin Ski Corp, Buttermilk and Snowmass and their affiliates, and their officers, agents, servants, employees, and attorneys and all other persons or entities in active concert or participation with them from refusing to participate with Plaintiff in the provision of a joint four-area ski lift ticket whereby revenues are allocated based upon actual usage at each area.

4. That the court grant such other and further relief as it deems just and proper.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

Dated: January 26, 1981.

IRELAND, STAPLETON & PRYOR, P.C.
TUCKER K. TRAUTMAN
JOHN H. EVANS

/s/ By TUCKER K. TRAUTMAN
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[Certificate of service omitted in printing]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-Z-1012

ASPEN HIGHLANDS SKIING CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

ASPEN SKIING CORPORATION, a Delaware corporation, *et al.*,

Defendants.

ANSWER TO AMENDED COMPLAINT

Defendants Aspen Skiing Corporation, Buttermilk Mountain Skiing Corporation and Snowmass Skiing Corporation (hereinafter "ASC"), by their attorneys Holland & Hart, answer plaintiff's amended complaint herein as follows:

1. ASC admits that this action purports to have been commenced pursuant to the statutes cited by paragraph one of the amended complaint, but otherwise denies the allegations of said paragraph.

2. ASC denies the allegations contained in paragraph two of the amended complaint.

3. ASC admits that it maintains offices and transacts business in Colorado, and denies every other allegation contained in paragraph three of the amended complaint.

4. ASC admits the allegations contained in paragraph four of the amended complaint.

5. ASC admits the allegations contained in paragraph five of the amended complaint.

6. ASC admits the allegations contained in paragraph six of the amended complaint.

7. ASC admits the allegations contained in paragraph seven of the amended complaint.

8. ASC admits the allegations contained in paragraph eight of the amended complaint.

9. ASC admits that its business operations utilize instrumentalities of interstate commerce, including advertising media, mail and modes of interstate travel, admits that a substantial number of persons who utilize skiing facilities in Aspen travel from outside the State of Colorado, and admits that portions of its skiing facilities are on land which is leased pursuant to United States Forest Service permits, but otherwise denies the allegations of paragraph nine of the amended complaint.

10. ASC denies the allegations contained in paragraph ten of the amended complaint.

11. ASC denies the allegations contained in paragraph eleven of the amended complaint.

12. ASC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twelve of the amended complaint, and therefore denies same.

13. ASC admits that in certain years during the 1960's coupons were available and were accepted by it in exchange for ski lift tickets, but otherwise denies the allegations of paragraph thirteen of the amended complaint.

14. ASC admits that it entered into a joint venture with plaintiff in 1974 for the purpose of organizing ARI, and that a joint four-area ticket was offered through ARI during the period from 1974 to 1977, but otherwise denies the allegations of paragraph fourteen of the amended complaint.

15. ASC admits the allegations contained in paragraph fifteen of the amended complaint.

16. ASC admits that a four-area ticket was offered in the Aspen area during the 1977-1978 skiing season, and that ASC also offered a three-area, six-day ticket during that

season, but denies the remaining allegations of paragraph sixteen of the amended complaint.

17. In response to paragraph seventeen of the amended complaint, ASC admits that in 1977-78 revenues from the sale of the four-area ticket had been allocated 15% to Aspen Highlands and 85% to ASC, and that in previous years other methods of revenue allocation had been used. ASC otherwise denies the allegations of paragraph seventeen.

18. ASC denies the allegations contained in paragraph eighteen of the amended complaint.

19. ASC denies the allegations contained in paragraph nineteen of the amended complaint.

20. ASC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph twenty of the amended complaint, and therefore denies same.

21. ASC admits that it refused to act as a redemption center for Highlands' Adventure Pack coupons or to accept such coupons in lieu of payment for lift tickets, but otherwise denies the allegations of paragraph twenty-one of the amended complaint.

22. ASC denies the allegations contained in paragraph twenty-two of the amended complaint.

23. ASC denies the allegations contained in paragraph twenty-three of the amended complaint.

24. ASC denies the allegations contained in paragraph twenty-four of the amended complaint.

25. In response to paragraph twenty-five of the amended complaint, ASC incorporates its responses to paragraphs 1-24 as set forth above.

26. ASC denies the allegations contained in paragraph twenty six of the amended complaint.

27. ASC denies the allegations contained in paragraph twenty-seven of the amended complaint.

28. ASC denies the allegations contained in paragraph twenty-eight of the amended complaint.

29. ASC denies the allegations contained in paragraph twenty-nine of the amended complaint.

30. ASC denies the allegations contained in paragraph thirty of the amended complaint.

31. In response to paragraph thirty-one of the amended complaint, ASC incorporates its responses to paragraphs 1-24 and 27-30 as set forth above.

32. ASC denies the allegations contained in paragraph thirty-two of the amended complaint.

33. ASC denies the allegations contained in paragraph thirty-three of the amended complaint.

34. ASC denies the allegations contained in paragraph thirty-four of the amended complaint.

35. ASC denies the allegations contained in paragraph thirty-five of the amended complaint.

36. In response to paragraph thirty-six of the amended complaint, ASC incorporates its responses to paragraphs 1-24 and 29-30 as set forth above.

37. ASC denies the allegations contained in paragraph thirty-seven of the amended complaint.

38. ASC denies the allegations contained in paragraph thirty-eight of the amended complaint.

39. ASC denies the allegations contained in paragraph thirty-nine of the amended complaint.

40. ASC denies the allegations contained in paragraph forty of the amended complaint.

41. ASC denies the allegations contained in paragraph forty-one of the amended complaint.

42. In response to paragraph forty-two of the amended complaint, ASC incorporates its responses to paragraphs 1-24, 27, and 29-30 as set forth above.

41(A). ASC denies the allegations contained in paragraph forty-one (A) of the amended complaint.

42(A). ASC denies the allegations contained in paragraph forty-two (A) of the amended complaint.

43. ASC denies the allegations contained in paragraph forty-three of the amended complaint.

FIRST AND SEPARATE DEFENSE

The amended complaint fails to state a claim or cause of action upon which relief can be granted.

SECOND AND SEPARATE DEFENSE

While continuing to deny the material allegations of plaintiff's amended complaint, ASC asserts that any actions by it which could be deemed relevant to said amended complaint were legal, reasonable and did not constitute unreasonable restraints of trade in violation of any statute.

THIRD AND SEPARATE DEFENSE

Plaintiff has not been injured within the meaning of 15 U.S.A. § 15.

FOURTH AND SEPARATE DEFENSE

While continuing to deny the material allegations of plaintiff's amended complaint, ASC asserts that any of its actions relating to ski area operations, pricing, variety of lift tickets and any other actions alleged by the amended complaint were approved, authorized or required by valid regulations and orders of the Secretary of Agriculture of the United States, or other governmental entities.

FIFTH AND SEPARATE DEFENSE

While continuing to deny the material allegations of plaintiff's amended complaint, ASC asserts that the Court lacks jurisdiction herein on the ground that the United States Department of Agriculture and the United States Forest Service are vested with primary jurisdiction over the subject matter of this action.

SIXTH AND SEPARATE DEFENSE

While continuing to deny the material allegations of plaintiff's amended complaint, ASC asserts that said amended complaint should be dismissed for failure to join the United States Department of Agriculture and the Secretary of the Department of Agriculture, indispensable parties to this action.

SEVENTH AND SEPARATE DEFENSE

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations, 15 U.S.C. § 4B.

WHEREFORE ASC prays that this action and plaintiff's amended complaint herein be dismissed, and that ASC be awarded judgment against plaintiff together with its attorneys' fees, expert witness fees and costs expended herein and such further relief as the Court may deem appropriate.

HOLLAND & HART

/s/ By DAVID G. PALMER
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Corporation and Snowmass
Skiing Corporation

[Certificate of service omitted in printing]

TRANSCRIPT OF PROCEEDINGS IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, JUNE 1, 1981, TO JUNE 19, 1981

• • •

Testimony of Whipple V.N. Jones

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

• • •

[150] Q. Okay. Could you tell the jury how you ended up starting Aspen Highlands?

A. I started Aspen Highlands as a result of the Forest Service telling me that Aspen Mountain was getting crowded and they thought that a ski area ought to be started at Highlands; and so I hired Friedl Pfeiffer and Dick Durns to make a feasibility report to me on the feasibility of a ski area at Highlands. The report was favorable, and I took it over to Willie Hodges, who was the President of the Aspen Skiing Corporation, and Ed Garston, who was their Secretary. We had a meeting at my house, and I told them that the Forest Service suggested we have a ski area at Highlands. Willie Hodges, who was the original President of Aspen Skiing Corporation, and who was the President before D.R.C. Brown—D.R.C. came on in about '62 or '63—Willie Hodges said, "We've got plenty of problems [151] at Aspen now, and we don't think we want to expand skiing in Aspen."

Q. Did you own the land at Highlands?

A. Yes. I owned the base area.

Q. What did you do after your meeting with Mr. Hodges?

A. Well, I thought about what I should do with these feasibility reports, and they looked pretty good to me; so I decided to build the area myself.

Q. What facilities did you first construct at Aspen Highlands?

A. I first constructed Exhibition Lift, which went from the 8,000-foot level to about 10,000-foot level; and then I constructed Thunderbowl Lift, which went from another part of the mountain from the 8,000-foot level to about the 9,000-foot level. I then put in a T-bar, which had about 400 feet of vertical and built a base lodge with a restaurant at the bottom and a ski shop at the bottom and a rather large parking area at the bottom.

Q. Could you describe for the jury the physical characteristics of the mount in itself to make it appropriate to have a ski area there?

A. Yes. Aspen Highlands is—well, Mother Nature endowed it with just about the right slopes. We are 25 percent a beginner area, 50 percent an intermediate area, and 25 percent an advanced area. It faces north, and there is very little wind [152] on the mountain. It is an ideal mountain.

Q. You said that Aspen Highlands opened in approximately 1958. Is that right?

A. '58-'59 was our first winter.

Q. When did Buttermilk open?

A. Buttermilk opened the same year.

Q. Could you describe who developed Buttermilk Mountain?

A. Yes. Arthur Pfister and Friedl Pfeiffer developed Buttermilk Mountain. They each owned part of the base area of the mountain.

Q. Who are those gentlemen?

A. Friedl Pfeiffer came from St. Anton, Austria, and had been an Olympic skier—a fine skier—and was head of

the Aspen Skiing Corporation Ski School; and Art Pfister was a rancher.

Q. I see. Now, as of 1958, then, there was the Aspen Skiing Corporation Mountain, Aspen Mountain; the Highlands; and Buttermilk. Is that right?

A. Yes.

Q. Now, could you generally tell the jury what types of lift tickets the various areas offered in the late 50's?

A. Well, they offered a daily ticket and a half-daily ticket and a child's ticket.

Q. Were there any interchangeable, multi-day tickets when you got started?

[153] A. No, not at that time.

Q. Now, was there a multi-interchangeable lift ticket offered after 1958 at some point?

A. Yes, there was.

Q. Could you describe how that ticket developed?

A. One day Friedl Pfeiffer called [illegible] and said, "I'd like to have lunch with you and D.R.C.," and we went over to the Red Onion and had lunch. He said, "In St. Anton, we have a mountain that has three different lift companies—lifts owned by three different lift companies." He said, "We sell a ticket that is interchangeable." It was good on any of those lifts; and he said, "I think we should do the same thing here. We would have a ticket that would be good at Aspen Mountain and one at Highlands and one at Buttermilk."

So we thought about it and worked out a way with Ralph Melville, who was in the Chamber of Commerce; and we issued a six-day ticket which was composed of six coupons. Those coupons were purchased from the bank by each individual ski area. We sold those six coupons to our customers; and then when the customer used the coupon,

he exchanged it for a daily lift ticket at Buttermilk or at Ajax, which is Aspen Mountain, or at Aspen Highlands.

We took that coupon and sent it in to the bank with our daily receipts, and we received our money on a usage basis.

Q. Okay. Now, could you tell me why it was decided to [154] divide the revenue up on the basis of usage rather than some arbitrary fixed percentage?

A. Well, it seemed to us that that was the fair way to do it. When you have a skier come to your area and he makes moguls or he uses your snow and uses your lifts, you should be reimbursed for that. This method reimbursed us that way.

Furthermore, it allowed us to compete with the other areas. For instance, it allowed Highlands to compete with the other two areas to get more skiers there. We innovated certain ideas and tried to get additional skiers there.

Q. Would you tell the jury what kinds of things during this period of time—we are now, I take it, into the 60's—what kinds of things were done at the Highlands to try to get skiers to come to your mountain rather than go to Ajax or to Buttermilk

A. Well, we're 1½ miles from the center of Aspen; and most of the lodging is in Aspen. We soon found out that it was necessary to have a bus system to bring people out to Aspen Highlands. We at first hired the manger of the Glenwood-Aspen Stages to bring people to Aspen Highlands. We paid him a quarter a customer, and it worked out pretty well.

Then we finally bought buses, and I think we ended up with a fleet of about 10 buses now that go into town and bring people out to Highlands. That was one of the things we did.

Q. Let me ask you a question about that before we [155] continue. Was the skier charged for the bus transportation?

A. Oh, no. There was no charge to the skier. We did that ourselves.

Q. What other items did you develop?

A. Well, we really were very fortunate in getting topnotch people when we started Aspen Highlands. We hired Stein Erikson, who was the Olympic champion in the 40's. He was a Gold Star Medal winner there, and we also hired Peter Seibert. Peter Seibert was our General Manager the first year, and Peter Seibert started Vail and is the founding father of Vail.

Peter and Stein Erikson laid out all our trails, and we were very fortunate to have them both with us.

In order to get more people out there, we had Stein doing—we called it "Stein's Flip," and he did a forward somersault in a layout position. It still is one of the best layouts that anybody does. We used to have him on Sunday afternoons do that sort of thing.

* * *

[158] Q. What is the significance of a Forest Service permit for a ski area?

A. The Forest Service permit allows you to lease the area of Forest Service land on the mountain for approximately [159] 30 years.

Q. Can you operate a ski area on Forest Service land without such a permit?

A. No.

* * *

Q. Okay. Now, during those years—excuse me—you have mentioned the acquisition of the Buttermilk area by Aspen Skiing Corporation and the acquisition of the permit of Mr. Jans. Were there ever any instances in the 60's when you were approached by the Aspen Skiing Corporation?

A. Yes. Paul and Peter Nitze came over to see me in the early 60's and asked me if I wanted to sell Aspen Highlands to them. I said, "Well, I might, if I get the right price; but why do you want to buy Aspen Highlands? You already have Aspen Mountain."

He said, "Well, what we want to control is skiing in Aspen."

* * *

[161] Q. Now, are you familiar with an organization known as Aspen Reservations, Inc.?

A. Yes, I am.

Q. Could you describe how that organization originated?

A. Aspen Reservations, Inc., was initiated by Bill [162] Brehmer, who was our Marketing Director in the early 70's. It was his idea to have a well-run, central reservation service and to have that service market package plans. He had the idea that the package plan should be a four-area, six-day ticket; that it would be sold by tour operators and travel agents; and ARI would be the leading organization marketing those packages.

* * *

Q. You mentioned that the idea for this Aspen Reservations was Mr. Brehmer's. He was your Marketing Director. Could you explain the difference in the four-area ticket that was offered as part of this venture with what was offered previously in the 60's?

A. The fundamental difference was that we had a [163] convenience package for the customer, in that he had the ticket on a strap around his neck—a string around his neck. When he went through the lift line at any particular area, it was punched. That gave us a credit for his use of the area at that time, because we made a survey and we counted the number of people, for instance, that

went up on our lift that day who had this kind of a ticket; where as in the coupon system, the coupon itself was evidence of the count.

Q. Now, was this ticket sold at the multiple of the daily lift ticket? In other words, if it was a six-day ticket, was it just six times whatever the individual daily lift ticket was?

A. No. It was sold at a small discount, usually around 5 percent or something like that.

Q. Now, did this ticket require the customer to ski any of the areas for a fixed number of days?

A. No. You could ski anywhere you wanted to in the Aspen area on this ticket.

* * *

[164] Q. Let me ask you: Why was a survey used for this particular ticket?

A. Well, it was the only way that we could figure out with this kind of a ticket around their neck that we could determine the usage at each ski area; and that's what the survey did.

Q. Why was usage chosen as the method of allocating?

A. Well, it seemed to us to be the only fair way of allocating revenues.

Q. You mentioned previously that you were attempting to get people to come to your mountain in the 60's. In the 70's, [165] when this ticket was inaugurated, can you tell me were there any other items that you did at your mountain to attempt to get people to come there once they arrived in Aspen for their vacation?

A. Yes, we did. We initiated picnics, wine and cheese party at Cloud 9, which is two-thirds of the way up our mountain; and we, for groups of 20—we offered this gratis to our customers.

We also, on Fridays initiated a series of acrobatic skiers coming down in front of the—our midway restaurant, which we called the Merry-Go-Round. We also instituted ski patrol jumps over our sun deck at Cloud 9. All these items contributed to a fun atmosphere at Highlands.

Q. Did you have racing at Highlands?

A. Yes, we had—we were the first ski area in Aspen to start NASTAR.

* * *

Q. Now, did Aspen Highlands develop a ski school?

A. We were the first people in Aspen to develop the [166] GLM method of instruction; and we still use it and we are still the only ski area in Aspen to use the GLM method of instruction. It's been very successful.

Q. Could you tell the jury what GLM stands for?

A. GLM means Graduated Length Method of Skiing. It's a short ski. You start your beginning skier on a roughly—a two-foot ski, and then after a day or so he gets to a three-foot ski and then to a four-foot ski; and that's why it's called the Graduated Length Method. We guarantee that any skier will get his money back if he can't ski from midway down within three days' time.

In the old days, a long ski used to take you six weeks to learn to ski; but now we can do it in three days.

* * *

Q. Do you know what your revenue percentages were for the '73-'74 season through the '76-'77 season?

A. I don't know them offhand, but I have a note in my pocket which will tell me what they are, if I may look at my note.

Q. I think you can do that.

A. All right.

Q. As long as there is nothing else on it. Go ahead [167] and just refer to it—just refer to it.

A. In '73-'74, our percentage was 17½ percent. In '74-'75, our percentage was 18½ percent. In '75-'76, it was 16.8 percent. In '76-'77—that's a no-snow year—it was 13.2 percent.

Q. Now, Mr. Jones, why did your percentage drop in the '76-'77 year?

A. That year—we have always made a point of opening Aspen Highlands on Thanksgiving Day; and that year our snow was very light, but we opened and we didn't get the snow that we expected to have. We sort of skied out our snow.

Aspen Mountain didn't open until January 8th that year, and they had a pretty good storm right about that time, and the storm helped them and didn't help us very much; so our percentage went down because of the fact that we opened prior to the time that they did.

* * *

[168] Q. Mr. Jones, why was this joint venture that operated the central reservations in Aspen and also operated this four-area ticket sold?

A. It was sold primarily because we felt that we should be in the business of lifting people up the mountain and having them ski down our mountain rather than being in the reservation service.

Secondly, the lodges felt that the ski corporation owning Aspen Reservations might show some partiality in reservations and so forth, and they felt that they should run it.

Thirdly, the Attorney General felt that because we owned this jointly there was a chance that we might be discussing pricing of tickets and so forth. They alleged

that; but of course we didn't do that through it, so this offer came along and we sold it.

* * *

[169] Q. Could you briefly tell the jury what a ski package is?

A. A ski package is usually a reservation to stay in Aspen, plus the ski tickets to ride the lifts in Aspen. Sometimes it may include rental skis, and sometimes it may include [170] an air ticket from St. Louis to Denver and from Denver to Aspen; but usually it's—The part that we are concerned with is mainly the ski lift ticket and the reservation in Aspen.

* * *

[172] Q. Okay. Can you tell the jury why Aspen Highlands accepted a fixed percentage of 15 percent in the '77-'78 season?

A. Mr. Wentzel, who is our Financial Vice President, had corresponded with people over in Aspen Skiing Corporation, and they offered him 13.2 percent as a fixed percentage break for us. He wrote back and said that that was not fair. They negotiated 15 percent fixed price participation for us.

When I say, "fixed price," I mean we wouldn't get any credit at all for any additional people we brought to our mountain; but talking it over, why it developed that we wouldn't have had a four-area ticket unless we had accepted that 15 percent.

Q. Now, did Aspen Skiing Corporation mountains offer another multi-day ticket, multi-area ticket in the '77-'78 ski [173] season?

A. Yes. They offered a six-day, three-area ticket. That means when you bought that ticket you could ski Aspen

Mountain, Buttermilk, and Snowmass; but you could not ski Aspen Highlands.

* * *

[187] Q. Could you tell the jury what the substance of that discussion was?

A. We had some coffee and discussed this letter, and I went over it with him and told him that I thought it was very unfair to have a fixed percentage allocated to Aspen Highlands and that we probably would not be able to go along with his suggestion because the 12½ percent was way below our historical average; and we also felt that we were unable to compete for customers because we had this fixed percentage allocated to us.

[188] Q. Mr. Jones did you talk about any other methods of allocating revenue on the basis of usage?

A. Yes. We had a usage basis, which we wanted to have and thought very necessary. I said that we would use coupons or we would use a survey at our area by an independent auditor—somebody like Price Waterhouse—somebody like that—and also if there were an electronic device available to count customers, we would use that.

We tried, oh, 10 or 15 years ago to get electronic devices to count customers, but we were never able to get IBM or NCR interested in it.

Q. Now, with respect to a coupon arrangement, what did you have in mind in those discussions?

A. The coupon arrangement was very similar to the one we had in the 60's and the one that is being used at Ski the Summit by Aspen Skiing Corporation.

Q. What is Ski the Summit?

A. Ski the Summit are four mountains in the Front Range: Breckenridge, Copper Mountain, Keystone, and Arapahoe. They use the coupon system to divide their revenues.

Q. Did Mr. Brown respond to the idea of using coupons as used in the 60's or at Ski the Summit?

A. He was very adamant that they did not want to have any surveys at all, nor did they want to use coupons. He said, "This is it, and I'm not going to change it."

* * *

[192] Q. Okay. Now, Mr. Jones, could you tell the jury why you were unwilling to accept a 12½ fixed percentage in the '78-'79 season where as you agreed to a 15 percent fixed percentage the year before?

A. The year before we agreed to a fixed percentage [193] because we wanted to keep our four-area ticket in operation, and we felt that if we didn't agree to that there would be no more four-area ticket. But we also at that time felt that we would be able to convince the Aspen Skiing Corporation during that period that we should have a cut of the gross revenues based on usage rather than a fixed percentage. We have always felt that a usage basis is the fair way to handle it, and also it results in each area competing to get more customers for each area. In doing so, why the consumer benefits from that.

We also felt that in the year they offered this 12½ percent very firmly and said this is it or else that we could see the handwriting on the wall. The next year, they were probably going to say, "We will offer you 10 percent," and so forth, or maybe even lower than that. We just felt that it was not a fair offer to us.

* * *

[197] Q. Mr. Jones, this lawsuit was brought shortly thereafter. Can you tell the jury why you brought the lawsuit?

A. I brought this lawsuit because we have a fine mountain. We developed it with the best equipment available.

Our mountain uses the same kind of lifts made by Riblet Tramway Company that Aspen Mountain uses. We had brought in top-notch people: Peter Seibert, who established Vail; Stein Erikson, who was a gold medalist Olympic champion. We built up a fine management group at Aspen Highlands. Our mountain manager as a boy dug holes for our original towers to be set in place. He's been with us some 23 years.

During this period, we put into effect a four-area ticket that was based on usage, and it became very successful—so successful, in fact, that the Aspen Skiing Corporation used the same kind of ticket to apply to their three-area ticket and cut us out of that—of participating in the four-area ticket. We were severely damaged by them locking us out of that type of ticket, and that's why I brought the suit.

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MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[209] Q. Aspen Highlands has a budget, for example, for media advertising, magazines, newspapers, things of that nature?

A. The Marketing Department does.

Q. Yes. The Marketing Department of Aspen Highlands?

A. Yes.

Q. And as I understand it, you advertise in various national and regional magazines, such as the skiing magazines [210] and airline magazines—things of that nature?

A. Very little in national magazines, but our advertising is mostly—our dollars are spent mostly in Aspen.

Q. You do advertise in nationally circulated magazines, don't you?

A. I don't think we did last year, but the Marketing Department would have to give you that answer.

Q. In years prior to last year, did you?

A. Occasionally.

• • •

[212] Q. Okay. It is also true, Mr. Jones, that you send representatives to ski shows in Mexico, for example?

A. One year we did.

• • •

[213] Q. Okay. The skiers who are drawn to Aspen—would you agree with me—are a relatively mobile and relatively affluent segment of society?

A. Yes.

• • •

Testimony of James Wentzel

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[267] Q. Did you have any discussions with Mr. Sullivan concerning contingency plans, if you will, by the Aspen Highlands to market other kinds of multi-area tickets?

A. Yes, I did. I believe my letter reflects that again that when I was made aware of this by Mr. Sullivan that they were going to do their own three-area ticket that that caused me concern and that we—and I think I indicated to Mr. Sullivan that we may have to do some kind of our own four-area, six-day ticket of our own. We'd have to come up with something innovative, because we felt the four-area capability was very important to us, to the resort of Aspen.

[268] Q. I am not following you here, Mr. Wentzel. At this time, did you know whether there would be a four-area ticket or not, in '77-'78—a joint four-area ticket?

A. At this time, based on this phone call, I was very doubtful that there was going to be a joint four-area ticket.

Q. All right. When you were now talking about a four-area ticket, you were talking about one that would be offered by Highlands. Is that right?

A. Right. What I am saying is that it didn't look to me very good that the Aspen Skiing Corporation was going to participate with us in allowing us to have a four-area ticket with them; and what I was saying is that we may have to put something together quickly—Aspen Highlands ski area—to have a four-area ticket.

Q. What did you tell Mr. Sullivan about putting something together with Aspen Highlands in the nature of a four-area ticket?

A. As the memo reflects, I indicated in that conversation that if they took that approach of having only a three-area ticket and not a four-area ticket with us that we may have to do something on our own; and I asked Mr. Sullivan if they would be willing to assist us in still providing the consumer with a four-area ticket by allowing us to issue vouchers along with our daily tickets that the consumer could bring over there to their window and exchange for one of their daily tickets, or [269] would the Aspen Skiing Corporation be willing to sell us, for instance, if Highlands was going to have three days of skiing at Highlands and want to give them three days skiing at the Aspen Skiing Corporation—would the Aspen Skiing Corporation sell us their three-day ticket—three-area, three-day ticket in bulk, in advance, so we could combine a package, or would they sell us their daily tickets in advance in bulk.

The memo reflects Mr. Sullivan said no, they would not be willing to do that, because they would not be willing to help out in a competitive situation like that.

• • •

[271] Q. Why did you feel that 13.2 percent was not representative, as you testified?

A. I didn't feel 13.2 was representative at all because 13.2, while it was our percentage in the '76-'77 season, the '76-'77 season was a very unreflective year of anything, because it was a no-snow year. Aspen Highlands, as was previously testified, got the reputation of being skied off because we made an effort to open at Thanksgiving, and there was a wide reputation that our snow was skied off. Perhaps, I feel, that had a bearing on our skier days.

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Testimony of William Comstock

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[309] Q. Could you describe in 1976-'77, the no-snow year, which would have been your first season in this position, first of all what types of tickets were offered by the various Aspen mountains?

[310] A. The major ticket that was offered, or the primary ticket as far as the guest was concerned, was the four-area ticket sponsored by the two corporations through the vehicle known as Aspen Reservations.

• • •

Q. You mentioned that the ARI joint venture existed during that period of time. Were they involved in marketing efforts on behalf of the Aspen resort?

A. In 1976 and '77, ARI did do, to my recollection—I was not directly involved with them, but they did do national marketing, yes.

Q. And how was that funded—that marketing?

A. It is my understanding it was supported jointly by the two ski corporations, and it was based on some formula relative to the utilization of the four-area ticket by the guest.

Q. Now, did you also on behalf of the Aspen Highlands do national advertising or national promoting—national marketing?

A. In 1977, or 1976-'77, I did not do any national advertising, but we did do some promotional work.

[311] Q. Could you describe what that national promotional work was?

A. Yes. We organized a tour, which was a coast-to-coast promotional tour, where I visited most of the major tour operators, travel agents, ski clubs, and airline reservation centers that we did business with and simply promoted Aspen at large.

By the way, I've always had the philosophy that what you do is you promote Aspen. We sell one product when you are on the road on a national basis, and that is Aspen.

Q. Why is that?

A. It is the only product that the guest identifies with in Pittsburgh, for instance.

Q. Okay.

A. He's anxious to get there, but he doesn't make a differentiation between anything at Aspen. It is Aspen, and it is a package—a singular package.

Q. During '76-'77, did you do any advertising, promotion, or marketing in the local market—the Aspen area?

A. Yes. There was some done by the Aspen Highlands.

Q. Could you describe first of all what is the purpose of that advertising or that promotion?

A. It is to improve the guest attendance at the Aspen Highlands, and I would refer to it as improved market share.

Q. Once the people got to Aspen?

[312] A. Yes.

Q. Could you tell me what kinds of media or devices that you would use to attempt to do that?

A. It was primarily—it would have been on the radio, the Aspen Times, and then there is a free handout newspaper called the Aspen Flyer. Those would have been the primary entries.

Q. And what was it about Aspen Highlands that you promoted to try to get people to come to your mountain rather than going to Buttermilk or Ajax or Snowmass?

A. At that time—and I still feel it's true—that the primary attraction was the ski school, what we offered in the ski school as far as the person coming there. It gave them an opportunity to really have an enjoyable experience in Aspen right off the bat. They didn't have to go home with numerous bruises and contusions and twisted legs and all of those other things.

Then in addition to that, we tried to give them almost a three-ring circus experience of many different things that were going on. We had a NASTAR event, which I believe was run two days or so out of the week. We had race events running anywhere from major pro races to local types of races. We had free-style contests. We had the Ski Patrol hurdling over the ski deck. We had wine picnics—wine and cheese picnics for groups that were visiting us.

[313] Those are things that come to mind right now.

* * *

Q. We were talking about local promotions. Did you ever visit the airports or do anything of that nature to try to get [314] people to come to your mountain?

A. In that year we did have a program that I instituted in going down to the airport here in Denver, coming down to the airport here in Denver. As you have been apprised, it was a year when the snow conditions were rather marginal, and we were getting some very bad publicity over the country. The guests were cancelling, and the people who were arriving came with a certain amount of hesitation and wondered if they had made a good decision; so I proposed a program that started with my wife and I coming down here. We were dressed in identity clothing to meet the guests at the Aspen Airport (sic), as they would be waiting to board a plane to come to Aspen, assuring them that they had made a good decision in coming to the area and that they would have an enjoyable time and that their expectations would be met.

Q. Did you ever meet people at lodges or condominiums?

A. I wasn't directly involved in doing that myself, but we did have a program where members of our ski school would go out and our customer service department would go out to various lodges on a regular basis. They would show any number of films that we would be involved in the production of.

Again, it would be an expansion of the snow hostess program that I mentioned a few minutes ago, where they would offer the ski school services, perhaps talk about techniques or one technique vs. another, one ski vs. another. All of the [315] different things that a skier might think about before he goes onto the slopes the following day.

* * *

[316] Q. What types of tickets were offered in '77-'78, just briefly?

A. Again, we had the four-area ticket which was the primary package ticket. We had a one-day and a three-day, and I believe a five-day lesson and lift package. The Aspen Skiing Corporation had a one-day and I believe they introduced a six-out-of-six day, three-mountain ticket only, to the exclusion of Aspen Highlands.

Q. Now, in that year who sold the four-area ticket—or the four-area—joint four-area tickets?

A. Well, they were sold by many different agencies. The primary agency from our point of view—the one that we promoted and advertised—was the Aspen Reservation service; and then they [317] would have been sold by a handful of major tour operators throughout the country and then minor travel agents.

Q. Could you explain to the jury how Aspen Reservations, tour operators, and travel agents are compensated for selling a ticket like the four-area ticket?

A. Well, normally all arrangements are handled on a commission structure. The ticket is structured at a certain price, and then there is a commission structure which in some ways becomes almost classic, in that that percentage is the same year after year. Does that answer the question?

* * *

[318] Q. Could you describe what national promotions Aspen Highlands participated in in 1977—the '77-'78 season?

A. The program basically had already been set into motion by my predecessor, and it was simply being carried out; but there was national advertising. There were drop-in ads in newspapers. There were ski shows that were for the consumer that were done, and then we instituted a new

program. It was new that year. It was a national marketing tour called Ski Group '77, which was directed at the trade, the trade being defined as the travel groups, ski clubs, travel agents, tour operators, and airlines.

Q. Was there some national promotion done through Aspen Reservations, Inc., in which Aspen Highlands participated?

A. Yes, and I am not specifically aware of those things. That was—we put a lot of money into it, and yes, there was.

Q. What was sold in these national promotions?

A. Aspen. The package of coming to Aspen.

Q. Was there also a film that was produced that year?

A. Yes.

Q. Or around that time?

A. There was a jointly produced film.

Q. What was the name of that film?

A. Beginning of a Love Affair, by Freewheeling Films.

Q. By what?

[319] A. The company that produced it was called Freewheeling Films.

Q. What could you tell me—what was the purpose of producing that film?

A. Well, it was to—I would say it was to show the general overall ambiance of the four-mountain complex of Aspen, of what the guest could expect, what he might envision himself or fantasize himself doing and having happen to him; but it was the overall experience and the conveniences that were available to him in the single resort of Aspen and the opportunity that he would have with the great variety on four mountains.

Q. And what audience did this film—was it presented to?

A. A national audience.

• • •

[320] Q. Okay. How did the Adventure Pack start?

[321] A. Well, I guess I have to set it in a time frame.

Q. That's fine.

A. At one time, I remember we discussed that we were becoming aware that there were—that there was talk that apparently we might not have a four-area ticket again in coming years; and as a marketing person, my responsibility was to look at the alternatives. I can remember one day talking to Mr. Jones. He said to me that he wanted me to begin to prepare a conceptual idea for a four-area ticket that would be sponsored by the Aspen Highlands Skiing Corporation alone.

In fact, I remember he was terribly emphatic. I started just working through figures in my head, and I took them to him and he slammed his fist down on his desk. He said, "No, I want you to understand something; I want a four-mountain ticket regardless," and so that was my assignment. I went off and pursued it.

Q. Now, could you just describe generally the concept that you attempted to develop at that time? The concept of the Aspen Highlands having one mountain offering a ticket that would allow the skier to ski at four mountains?

A. Well, I had to start from the standpoint of economic feasibility of the ticket. In other words, one that we might be able to structure where we could at least have some profit return in it; and so I looked at the combinations that were available to us, whether a skier would come and ski Aspen [322] Highlands, let's say—well, be required to

ski Aspen Highlands one day with an option of skiing anywhere else he would like to five days, then doing the same combination but making it two days at Aspen Highlands or three days at Aspen Highlands or whatever. We began there.

Q. Let me stop you here for just a moment. Why did you design a ticket that would be good for six days? What was the reason for choosing six days?

A. Oh. Generally a guest—we are a destination resort. That means to a person that they plan to come there for a period of a vacation time, and that normally for us is one week. If you figure the transition time—that is, the time it takes you to come in, get installed in your motel or that same time to check out and leave, it allows you about six days to ski. So we wanted to structure a ticket which would give the person the opportunity to ski, if that is what he wanted to do, any and all of those six days.

• • •

[324] Q. Now, did you consider—let me go back for a minute, Mr. Comstock, Did you consider other alternatives such as not offering an Adventure Pack at all and just attempting to offer a daily lift ticket?

A. Yes.

Q. And what was the conclusion that you reached?

A. Well, that was prior to the discussion I just referred to with Mr. Jones, where he was so emphatic about saying, "I will [325] have a four-area ticket." In that conversation, it comes down to the fact that the guest, when he is in Dallas, Texas, or Los Angeles, or New York, or wherever his home is, as I said earlier today in my testimony, doesn't make a differentiation. He is buying a unity package called Aspen. He doesn't realize that there is a differentiation between Aspen Mountain, Buttermilk Mountain, Aspen Highlands, or Snowmass economically. He just thinks of it

as Aspen and that he should have the right to go to Aspen and put his skis on and go to wherever he cares to ski and have the benefit of the experience of any of those four mountains.

Q. Now, having developed or having made the decision that the tickets should be three days at Aspen Highlands, how did you set up a mechanism to allow the person to ski at other mountains?

A. Again, you have to work from the standpoint of assumptions. You don't have anything concrete until you actually have it in some kind of a contract form; and the assumption that I worked on for a long time was that either through my efforts or other people in a managerial capacity at Aspen Highlands, we would be successful in our negotiations with the Aspen Skiing Corporation to accept one of several alternatives for the guest buying the Aspen Highlands sponsored six-day ticket, giving the opportunity of skiing on their mountains for a choice of anywhere from one to three days.

* * *

[327] Q. Did you have a discussion with Peter Sullivan at the beginning, or were they just with Mr. Madsen and—

A. Primarily with George Madsen and Jack Brendlinger.

Q. Now, would you tell me what did you say during those discussions?

A. Well, initially we would have started out and just told them of our general construction of the ticket, and I approached such things as, "Could we buy single-day lift tickets from you that we could have our guests use in the ticket we were trying to construct—buy these tickets from us?" That would be an example. Or another example, if we did it as a coupon structure piece: "Would you accept these coupons or redeem these coupons in exchange for a lift

privilege for that day or for a period of time?" That would be an example of the kind of discussions we had.

Q. And what was the response you received from Mr. Madsen and Mr. Brendlinger at that time?

A. They were not encouraging. They did not come out and say directly no at that time, but let's say they were not encouraging. They'd normally say, "I don't believe it will be a possibility, but we will check with higher management."

* * *

[328] Q. And what was the design that you finally arrived at, just briefly?

A. Six coupons. Three of them required redemption at Aspen Highlands for any three out of seven days of skiing at Aspen Highlands. Three coupons with a face value of $15.

The intention was that the daily lift ticket was $15, and that that could be redeemed for the daily lift ticket at any of the Aspen Skiing Corporation mountains.

Q. Mr. Comstock, let me take you back to these coffee conversations. Did Mr. Madsen or Mr. Brendlinger or Mr. Sullivan give you any indication of why they may not cooperate in these coupons?

A. There was one statement—or the statement was made on [329] a number of occasions that from an administrative point of view it would be impossible. That was one. Then they had another one, and they said that they had discontinued the use of what were called coupons or vouchers because in past dealings, for instance, other tour operators or wholesalers they had lost money in a redemption process.

Q. What response, for example, did you have to this question of potentially losing money on redeeming the Aspen Highlands coupons?

A. "Well, if you don't want to lose money, what you have got to do is get somebody to guarantee that whatever you are doing, somebody else, a third party, will back it." The logical party in this case would have been one of the two banks that either of the two ski corporations did business with. There was the Bank of Aspen and the First National Bank of Aspen; so I approached both of their Presidents. I told them of the negotiating problem that we were having with the Aspen Skiing Corporation, and I said to them that I thought a possible solution to this would be if we were able to establish a trust account with both banks and that Aspen Highlands would pre-fund it, maintain it—in other words, keep that fund full of money so that on any given day, when the Aspen Skiing Corporation turned their cash pouch in to the banks, they could have immediate redemption for full face value. In other words, they would be paid right then $15 for every Aspen Highlands issued [330] voucher or coupon.

Q. Did you in fact make that arrangement with those two banks?

A. I did.

Q. And did you communicate that to Mr. Madsen and Mr. Brend'inger or Mr. Sullivan?

A. I did to all three of them.

Q. And what was the response?

A. Again it was no; and I did call Peter Sullivan and I had a meeting with him in his office and I said, "Pete, this is what we have done. I hope with this one more effort that you might consider accepting these coupons in exchange for a daily lift ticket."

I got a very, very definite response from him. It was a very negative response.

Q. We'll get to that in a moment. Could you tell me

what response you had in the earlier conversations to the problem of administrative hassle that they spoke to you about?

A. The idea was that the administrative problem that they would have would be that if somebody comes up and they have a piece of paper and they lay the piece of paper down and that is to be a redemption or a purchase for a daily lift ticket, this would create a problem for them. Actually, I had difficulty believing that, because other than cash—and I thought it was even more convenient than cash, because the face amount of this [331] coupon that we were offering was exactly $15. There could be no error. It was exactly the same value as their daily lift ticket and so I thought it would be more convenient even than cash; but they do accept and they have traditionally accepted, as far as I know, credit cards and traveler's checks, which require first of all signing and then giving change. You have to run them through the machine, etc.; and I thought this would even be more convenient than the traditional methods they were presently using.

• • •

[333] Q. What else had you done in the interim to attempt to work out an arrangement to facilitate exchange or redemption of the coupons—and now I am not necessarily referring to the Aspen Skiing Corporation.

A. Yes, I understand. There was one part of the program [334] that we had looked at, and I had only done some marketing research on it. I had not really done it yet in earnest, but that was what I talked to a few of the local businessmen about. I had mentioned that in our negotiations with the Aspen Skiing Corporation, stating that in the event that they chose not— or even in the case that they did choose to cooperate, would these local businesses be willing to act as redemption centers. In other words, could a skier go, carrying a coupon, and would you

consider it like a traveler's check with a value of $15. Could he go in and use it to purchase an item in one of these shops or restaurants, or could he redeem it for the full face value, like he would any other traveler's check?

I got a very positive response. I would say it was probably 100 percent from every businessman that I talked to in that initial market research, and that would have been at the time around September.

* * *

Q. Now, you mentioned a conversation with Mr. Sullivan that you had. Do you recall approximately when that was?

A. I believe it was right after the season had begun. I think it was right after the Thanksgiving opening. It had been in the first—no, first part of December.

Q. What was the purpose of the conversation?

[335] A. One more attempt to solicit the support of this program by the Aspen Skiing Corporation, and I felt really on behalf of the guest rather than on our behalf.

Q. What was the response of Mr. Sullivan?

A. I started to talk about that a couple of minutes ago. I felt that Peter reacted in a rather frustrated manner, or perhaps an angry manner. He came back and said, "Absolutely not. We will not have anything to do with a four-area ticket sponsored by the Aspen Highlands Skiing Corporation."

Really at that point, it was really beyond my imagination as to why not; and so I just asked the question why. The response was, "Well, we will not support our competition." That response actually shocked me at that time.

My answer to Peter was, "I don't understand why you think you," referring to the Aspen Skiing Corporation, "would be supporting the competition. Aspen Highlands has paid for all of the costs against this ticket. We have paid for all of the marketing cost. We are paying all of the

commissions. We have paid all of the national advertising and had planned to pay all of the national advertising attendant to the promotion of this program." I underlined the word "and" we were willing to pay the Aspen Skiing Corporation full value. We were not asking for them to give us a discount whatsoever. We were going to give them $15 for every single ticket that any guest wanted to purchase from them.

[336] I was told that they were supporting the competition, and I could not agree with that.

* * *

[338] Q. Now, in fact, did you do promotion and advertising of the Adventure Pack in the '78-'79 season?

A. Yes, Relatively extensively for us.

Q. Could you describe, for example, with respect to ARI—again, ARI is still in existence at this point under the auspices of Mr. Sturgis. Did the Aspen Highlands participate in the national advertising through ARI?

A. As I recall, this is the—is this '78-'79? Right?

Q. Yes.

A. We supported jointly an effort by Aspen Reservations in the production of what's called a glamor piece—just a brochure. I believe that our—we participated to the cost of somewhere around 6- or $8,000, and we gave them that money for production of this piece.

Q. And did the Aspen Skiing Corporation participate in [339] the production of this piece?

A. Yes. On a ratio based on this ticket utility we talked about before.

Q. And what was the purpose, or what was the theme that was sold in this particular brochure?

A. Aspen; and if you are interested in coming to Aspen, you are directed to—your inquiries are directed to Aspen Reservations, Inc., located in Aspen. The telephone number would have been very clear, and so on.

Q. Now, did you use this document which we have been referring to, which has been entered into evidence as Exhibit 20—did you use that particular document to advertise the Aspen Highlands four-mountain capability?

A. Yes. It was our primary marketing piece of that time.

MR. TRAUTMAN: All right. Let the Clerk hand the witness what's been marked as Exhibit 20.

Q. (By Mr. Trautman) Now, does Exhibit 20 have an insert in it?

A. Yes.

Q. Could you just identify what that insert is?

A. It's a piece that was produced by us. It's called, "Indulge your fantasies at Aspen Highlands." Basically it's a discussion of Aspen Highlands, and it's also a discussion of the four-mountain Adventure Pack and other lifts tickets that were available at that time at Aspen Highlands.

[340] Q. What use was this particular document made—who was it distributed to?

A. I believe that there were between 30- and 40,000 of them distributed to the trade, and the normal vehicle for that would be to give it to travel agents and tour operators for distribution to guests. In other words, this would be the type of a piece that upon inquiry at your travel agent he would give you, and it would help you make your decision on where you would want to go; and if it were Aspen, it would give you the information you would need to know in order to book your reservations there for the week you would care to be there.

MR. TRAUTMAN: Now, specifically if the Clerk would give you Exhibit 23A through N.

Q. (By Mr. Trautman) Those are again documents that have been entered into evidence at this point, Mr. Comstock, and they are advertisements that were done by Aspen Highlands in the '78-'79 year. Is that generally correct?

A. Yes.

* * *

[341] Q. The question was what was the theme that was communicated in these national advertisements for the Adventure Pack specifically?

A. Well, perhaps I can read the banner on it. It says, "Ski the best and explore the rest with the four-mountain Adventure—four-mountain Aspen Adventure Pack." It was basically—

Q. Could you explain what was the concept? What was the idea behind that theme?

A. Well, that the person, when he would read it—it would say, "Aspen Adventure Pack"; and the idea of, "Ski the best ..." was that we feel that the combination experience that you can have—what I mean by that—the combination of terrain that's available to you and the types of trails and [342] open skiing that's found at Thunderbowl, etc., that's available at Aspen Highlands makes it certainly categorized in the "Best" area. The ticket would give you the opportunity to ski Aspen Highlands for three days and then to explore the rest, meaning that they would have three other days on the ticket to be able to explore the other mountains that were available to them in Aspen.

* * *

[344] Q. Could you first of all for the jury describe what a tour operator is?

A. I explained just a few minutes ago that a tour operator is the person who acts like a wholesaler. He is the person who takes this—if you can consider that—a finished package and offers it to either the consumer—you as a tourist—or to a smaller travel agent who does not buy large packages. He usually as a tour operator puts together a lodging base—in other words, some place the guest will have to stay for a specific period of time—and will generally arrange for the transportation from that locale in which the tour is originating to the destination resort and return.

Q. Now, how many tour operators did Aspen Highlands use in the '78-'79 year approximately?

A. Oh, I would imagine, if I can break it into two categories—we had about 10 that were of a sort of a major size and then we probably had 20 more that were more or less considered in a minor capacity.

* * *

[355] Q. Mr. Comstock, during the '78-'79 season, were there problems of customer confusion in terms of the type of tickets that people, for example, brought to Highlands, thinking they could ski at Highlands?

A. Yes.

Q. Could you describe those problems?

A. We had as a regular occurrence people just simply coming up to the lifts and attempting to board and being told by our lift operator that they did not have a proper ticket.

Q. What kind of a ticket did they have?

A. They had an Aspen Skiing Corporation three-mountain, six-day ticket.

[356] Q. How often did this happen in the '78-'79 ski season?

A. Well, I don't have the statistics—you know—exactly; but from my experience it was on a very regular basis, like daily.

Q. Did you deal with any of these people personally?

A. Yes.

Q. Could you tell me what would happen in those circumstances?

A. If I can use an example, there was—I believe the man was a dentist. He was from the Des Moines area, came out with two of his children, and he had been told by our base lift operator that he could not board. He became somewhat irate and she had referred him to my office, which is right there on the ski slopes.

He came into my office and started out, "Well, I want to go skiing here, and I don't understand why I can't." When we got the situation slowed down and explained that there were two different tickets, well, what came out is irritation occurred because he had intended when he came to Aspen to be able to ski all areas and had particularly asked that question when he made his reservations. He did happen to make his reservations through Aspen Reservations, Inc.; and so he thought that he had basically been misled.

I suggested that perhaps certain remedies could change his particular plight at that time.

[357] Q. Did you deal with more instances like you described, other than this doctor from Des Moines?

A. Yes.

Q. Now, what in that situation—what would you do?

A. Well, I would mention his options to him.

Q. What were his options?

A. That he could stay at Aspen Highlands that day and ski, but he would have to or be obliged to buy a daily lift ticket at the full retail value. That would be Option 1.

Q. Did many of them do that?

A. No.

Q. What other options?

A. That I could call Aspen Reservations on his behalf and arrange for them to either make a refund; and if there were a refund involved, usually, as I recall, he would take his tickets down and the refund might not occur immediately. The check might not be cut at that time, but he could expect to find it waiting for him when he returned home, or he could exchange the ticket for Aspen Highlands sponsored four-mountain Adventure Pack.

Q. How long would that process typically take if, in fact, a consumer decided to do that?

A. Well, if you consider that from the time he got up in the morning and he got his transportation to Highlands and he probably stood in the lift line at the base, he came to my [358] office and went through that and I made the exchange parlay available to him, it would take better than half a day out of a six-day vacation.

Q. Now, what other options did the skier have in that situation?

A. To simply give up and accept the three-mountain ticket and go ski the Aspen Skiing Corporation mountains only.

* * *

Q. Now, Mr. Comstock, did you ever have occasion to have discussions with Mr. Art Pfister concerning the discontinuance of the four-area ticket?

A. Yes. I did happen to talk with Mr. Pfister.

* * *

[360] Q. What did Mr. Pfister say to you?

A. Well, he sort of just passed it off. In continuing along the same line of conversation, I said to him—I said, "Do you think there is a possibility that we will be able to continue our negotiation and perhaps reinstitute the four-area ticket as we have known in the past?"

Q. What did he say to you in response?

A. He said no, he didn't think that that would be a possibility; and he added, in fact, that he felt that he was rather instrumental in getting rid of what was known then as the four-area ticket; that he played a major role in that.

Q. Could you explain what he said in regard to his instrumentality in getting rid of the four-area ticket?

A. My recollection is that he said or had urged that the Aspen Skiing Corporation make an offer to Aspen Highlands during that offering period that would have to be refused by Mr. Jones, that would not be acceptable in any manner by Mr. Jones.

Q. Did he use those words, to the best of your recollection?

[361] A. I believe he used "an offer that Mr. Jones could not accept." I believe that would be close to the statement.

* * *

Testimony of Thomas Richardson

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[400] Q. Is it true that Mr. Brown felt that Aspen Highlands was an inferior product and that you had a concern of associating yourself with Aspen Highlands?

A. Yes, because the customers would feel when we had a four-area ticket that Aspen Highlands was part of the Aspen Skiing Corporation.

Q. Do you consider the Aspen Skiing Corporation to be a superior product to most skiing corporations in Colorado?

A. Yes.

Q. Do you consider it to be superior to Keystone?

A. Yes.

Q. Do you consider it to be superior to Arapahoe Basin?

A. Yes.

Q. Do you consider it to be superior to Copper Mountain?

A. Yes.

Q. Now, it's true, is it not, that you associate with those mountains in the offering of a four-area ticket in Summit County. Is that correct?

Breckenridge has a ticket with Copper and Keystone.

[401] Q. Yes. That's right.

• • •

[422] Q. Do you recall your testimony earlier today in which you said Breckenridge was a inferior area?

A. Yes.

Q. Were you saying that Breckenridge was inferior to Copper Mountain?

A. In its present state of the art, it does not have the facilities Copper has and therefore does not have the type of product that Copper has; and Copper probably has a better product, yes.

Q. Is it inferior to Keystone?

A. Physically, it could be better than Keystone; but at the present, it, in my opinion, is not as good a product.

Q. Is it inferior to Arapahoe Basin?

A. I would say it's a better product than Arapahoe Basin.

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MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATON)

[423] Q. You indicated that at the July, 1979, Board of Directors meeting, there was a discussion concerning the former Attorney General's Office on the one hand and another lawsuit.

A. Yes.

Q. What did you mean by that?

A. It puts you in the situation where it is a Catch 22. If you try to adhere to the lawsuit that the Attorney General had initiated against the Aspen Skiing Corporation, it could run straight into that—into opposition with the lawsuit with Aspen Highlands. You are damned if you do and you are damned if you don't.

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MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

[424] Q. You are familiar, are you not, Mr. Richardson, that the Attorney General's lawsuit which resulted in a consent decree did not prohibit the four-area ticket from continuing. Isn't that correct?

A. There were certain stipulations concerning the four-area ticket, but it did not prohibit it. That's right.

Q. And in fact it was offered the next year, '77-'78; isn't that correct?

A. That's correct.

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Testimony of Don Robinson

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[429] Q. Now, how many lifts does Aspen Highlands have?

A. We have 12 lifts.

* * *

Q. Now, how many lifts did you have when you started in 1958?

A. We had actaully [sic], in 1958—we had two chair lifts and one T-bar, which we had purchased from the Aspen Skiing [430] Corporation that was no longer in service there.

* * *

Q. Okay. Thank you. Now, subsequent to the initial installation of those lifts, did you develop further lifts?

A. After that time?

Q. Yes.

A. Yes, we did. In 1959, we installed a Poma Lift in [431] this general vicinity. Again, it ran up the hill in a little different line than this one, probably terminating right about this point, right here. That was a Poma Lift.

Q. That was 1959?

A. That was in 1959.

Q. Okay.

A. Do you want me to go on?

Q. Just keep going chronologically, if you could.

A. In 1960, we started construction of this Cloud 9 Chair Lift, and this was finished in 1961, as I recall. There was a problem with some parts or something there.

Q. Okay. Mr. Robinson, I think there may be a gap there. Could you indicate where the Exhibition Lift was when you first constructed it?

A. Yes.

Q. How far did it go?

A. It went all the way to Midway, right here; and that was one entire lift at that time. It was 8,800 feet long.

Q. Okay. Now, continue with Cloud 9.

A. The Cloud 9 was developed in 1960 and 1961. Up until that time, our mountain basically stopped right here. At that time it opened up much more of our mountain; so this was done in 1961.

In 1963, we decided that we needed a lift on the upper mountain there. We took the original Thunderbowl Lift [432] out and reinstalled it up at this location. That was done in 1963.

Q. What is that lift called?

A. That is Loges Peak Lift.

Q. Is that the lift that views the Maroon Bells?

A. Yes, it is.

Q. Okay.

A. Also about 1963, if my memory serves me, we installed one of the lower Poma Lifts. I believe it would have been this one right here.

Q. What was the purpose of that Poma Lift?

A. The purpose of that Poma Lift was for our ski school, for the beginning classes. It is also used for people that are going over to this lift to get to the top of it and ski down to that lift so that they don't have to walk across there.

Q. Okay.

A. So that was installed in 1963.

In 1964, we installed this other small Poma Lift right

here. The purpose of that also would have been for the ski school, primarily.

Q. Is that used for the ski school today?

A. Yes, it is.

Q. Okay.

A. I believe it was 1965 when we took a look at this area here.

[433] Q. What is that area called?

A. That's Thunderbowl, which is a very good intermediate skiing—beginning and intermediate—and we decided that we needed to put another chair lift back on that location. At that time, we did put another chair lift back here in the exact line that the original one had been.

Q. Is that the Thunderbowl Lift?

A. That is the Thunderbowl Lift, yes.

In 1966, we took the old T-bar out that was in here. We were having problems with it. People didn't like it real well. We installed a chair lift at this—in that location. That's the Smuggler Lift, and that also is a beginning type area right there.

In 1969 and 1970, we thought that we needed two ways up our mountain. Up until this point in time, we had basically one lift; and if this lift went down on us, we felt we would be in trouble. So we decided to install a couple of Poma Lifts to give us a second way on the mountain. We did that.

These are high-speed Poma Lifts. One of them runs from here to this location, where they can ski down and ski over to this area—to this other Poma Lift and then back to the Midway area. So that was done in '69 and '70 as a backup way up the mountain primarily and hopefully to give us more capacity on the mountain.

In 1970, we constructed Olympic Lift, which is this [434] lift right here, again to help alleviate the lift lines on this particular lift, which was a very, very popular lift on our mountain and also to give us that backup capability there in case something happened to this lift. We would have this one open.

From there we go to 1975, and that is when we installed this chair lift on this area to help hopefully to take some of the people from this area and put them over on this side of our mountain, which is fairly under-utilized—an under-utilized side of our mountain, and that was the purpose of that.

* * *

[450] Q. You mentioned something about fewer people being on the slopes. Could you describe just from your experience of a person that's been on this mountain for a number of years, [451] prior to 1977-'78 and after '77-'78?

A. Well, prior to 1977-'78, we had the four-area ticket, and we saw—I saw, although I didn't have the exact numbers—I saw a great many people skiing on our mountain. After the elimination of the four-area ticket, the skier days drastically dropped; and of course, they have declined every year since then, since that time.

Q. Do you believe they've declined because of the quality of skiing experience at Aspen Highlands?

A. No, I do not.

* * *

Testimony of Ronald M. Thompson

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[454] Q. Do you perform inspections of the four ski areas in the Aspen region?

A. Yes, I do.

Q. How often do you perform those inspections?

A. I am usually doing some sort of inspection in each ski area once a week.

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[458] Q. Now, as to quality, do you have an opinion as to the quality of the four ski areas in Aspen, Colorado?

A. I think Aspen, Colorado, has four of the finest ski areas in the United States.

Q. Let me focus on Aspen Highlands for just a moment. Since 1977-'78, up through the present season, have you noticed any deterioration in the quality of skiing experience provided by Aspen Highlands?

[459] A. No, I have not.

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Testimony of Bernard J. McMahon, Jr.

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[502] Q. Has [sic] the Director of Marketing, I take it your job and your responsibilities really focus upon selling some product for Aspen Highlands. Is that how you would characterize it?

A. I would characterize—well, marketing in general is determining the need and developing the product. The product in this case was the mountain itself. There were what I would call sub-products as far as the vehicles that the visitor to Aspen would use in skiing Aspen Highlands.

Q. What is it in your estimation that Aspen Highlands has to sell to the skiing public?

A. Well, that might be a little biased; but I think Aspen Highlands in probably the finest, well-balanced mountain in the Aspen area. The total Aspen experience consists of the Aspen mountains; and the Aspen Highlands specifically, as was mentioned in previous testimony, is the best-balanced mountain in Aspen, with 25 percent beginner, 50 percent intermediate, and 25 percent advanced. I think the uniqueness of the Highlands consists of the way we treat the customer when they come there. We are interested in families. We are interested in providing a whole experience for the entire family; and the skier, whether it be a total ski experience or in some cases merely spectator activities, as was mentioned before, that include the various free-style racing, picnics, and other activities we put on the mountain—it [503] doesn't necessitate being a skier at all in some cases. They can ride up as a foot passenger and watch some of these activities.

Q. What's your estimation as Director of Marketing of the market to which Aspen Highlands directs this product?

A. Well, I don't think there is any question—or in my opinion, our competition lies within Aspen and consists of the Aspen Skiing Corporation which controls the other three mountains in Aspen. I am particularly interested in getting skiers to the Highlands.

Q. In pursuing that goal of getting skiers to the Highlands, I would like to discuss briefly with you, if I could, the various marketing and promotional efforts that were pursued during the time that you have been the Marketing Director, starting with the '78-'79 season.

A. '78-'79?

Q. Excuse me—'79-'80 season. Could you describe for me any new directions that were taken in the marketing or

promotional efforts for Aspen Highlands—new from what had been present the year before?

A. Well, to mention a couple specifics, the Adventure Pack was discussed in some detail prior to my testimony. As you probably recall, it consisted of vouchers, of coupons, that were not acceptable to ski the other mountains as we had hoped; so in 1979 and 1980, to facilitate the experience of a purchaser [504] of the Adventure Pack, we included in High Season American Express Traveler's Checks. In this case, we put $50 worth of Traveler's Checks in this Adventure Pack. That, in effect, if we broke it down into costs, would have been giving the purchaser an extra $2 that year—the rate was $16—which would have provided three days of skiing that would have cost $48. We put $50 in American Express Traveler's Checks.

The reason for that, in case you are wondering, is that American Express does not have denominations that would have fit into that category, so we threw in an extra $2.

• • •

[505] Q. What led to the decision to include American Express Traveler's Checks, rather than coupons or vouchers.

A. As I mentioned earlier and as was discussed prior to this, the vouchers that were used the previous year were not acceptable to the Aspen Skiing Corporation as legitimate tender for a lift ticket on their mountains. We are always interested in the convenience of the visitor, and we felt that by providing the American Express Traveler's Checks that this would make it very easy for them to go to the Aspen Skiing Corporation's ticket office and purchase lift tickets; or actually they could take it about in town and use it at any of the restaurants or shops. It's totally a cash equivalent in the form of a traveler's check.

• • •

[507] Q. In addition to these changes in the makeup of the Adventure Pack itself, were there any other new directions or new elements of the advertising, marketing, promotional effort on the part of Aspen Highlands?

A. Well, we, as I say, tried to continue pretty much the same basic approach. However, the year prior to my arrival, there was a certain amount of expenditure in the national market [508] that we did not continue during the '79-'80 season. Those expenditures were primarily reflected in national advertising in Ski, Skiing, and Powder magazines. We did discontinue that.

However, we did continue exposure on a national level through various other means that we had done in the past.

Q. What means would those be that were employed to continue any national exposure?

A. Well, we do quite a few press releases. We work with the Colorado Ski Country U.S.A., who in turn does promotion throughout the country. We support the Aspen Chamber of Commerce that does promotions throughout the country. We belong to the American Ski Association—or we don't—I think we do have a membership, but basically when I say, "We belong," we work with the American Ski Association, and that is on the Front Range. They do promotion over here.

• • •

[509] Q. Did the maintenance of these efforts at national exposure and this national involvement require the same expenditure of advertisement dollars that the advertising exposure through Ski and Powder magazines in the previous year had required?

A. No, they did not. I am not sure what it was in that year, but if we run, as an example, just three ads in each of those magazines, in Ski, Skiing, and Powder, which are

probably three of the most popular skiing magazines, it could have added up to, including the production and so forth, another $100,000. I felt that by running those types of ads in those magazines at that expense about the most you can get out of it is an image identification. It's hard to get tangible results of that type of thing.

Q. I believe we learned from Mr. Comstock's testimony [510] that Highlands had pursued that expense of advertising campaign in the '78-'79 season, to promote primarily the Adventure Pack and Aspen Reservations, Inc. Is that correct?

A. That's my understanding; and as we discussed that type of exposure and trying to counteract the lack of a four-area ticket with the Adventure Pack through that type of media, it appeared to me that it didn't make sense to throw good money after bad on a project that really just didn't work.

Q. Were there any new elements of advertising copy or advertising items that were developed for Aspen Highlands during this period, during '79?

A. In the '79-'80 year? We tried—we always in the past had been working, I understand, with the lodges in Aspen, the Associations, and condominium managers. We feel they are very important. They are providing part of the overall Aspen experience. We continued to do that a little more extensively in that first year and offered all the lodge owners and condominium managers what we call a President's Club card. That was a card issued by Mr. Jones to the various people that he would like to recognize as contributing to the Aspen experience.

Q. If you could explain the President's card—what benefits that gave the holder and what the purpose of giving that card to the lodge owners would have been.

A. Right. The card itself was presented—could be presented to the ticket office in return ofr [sic] complimentary skiing [511] throughout the ski season.

Q. And what was the purpose of giving that kind of card to lodge owners?

A. Well, as I say, it's the people that—the lodge owners, we feel, make a fine contribution to Aspen, and we wanted to recognize that contribution they make. We hoped it would also give them an experience to come out and see the new developments that we had been doing at the Aspen Highlands on a firsthand basis and that would keep them current so they in turn could pass that information along to their various guests on a firsthand basis.

Q. Was there a new promotional brochure developed for the Aspen Highlands during that year, '79-'80?

A. Yes, there was. Our agency, who at that time was in Denver, did a new four-color piece for the Aspen Highlands; and they also did a new ski school brochure in two colors.

Q. Could you take a look at Exhibit 77? Is that the new brochure for the '79-'80 season that you have just been describing?

A. Yes, it is.

Q. Now, you mentioned that Aspen Highlands didn't pursue the kind of media advertising on a national basis that had been pursued in the preceding year; but was there any media advertising pursued by Highlands during 1979-'80?

A. Very much so. We continued to concentrate on the [512] local and regional advertising; and again, that was through the radio, the newspaper, various magazines—Aspen magazines and Tailwinds Magazine. Those two magazines were distributed locally in Aspen. Tailwinds Magazine is a publication of the Rocky Mountain Airways and is on the airline. Aspen Magazine is mailed nationally as well as picked up by local visitors; but it also is the in-flight magazine for Aspen Airways.

* * *

[515] Q. Mr. McMahon, we had been discussing the marketing and promotion efforts undertaken by Aspen Highlands during the '79-'80 season. You had run through the various print media advertisements that were used. Were there any other media efforts involved in your promotional attempts?

A. Not that come readily to mind in that year.

Q. Any radio or television advertising?

A. As I mentioned earlier, we did have radio advertising, [516] and we did that on a very consistent and frequent basis on both KSPN and KSNO, which are the AM and FM stations in Aspen.

Q. How was that radio advertising arranged for?

A. Well, we had arrangements with both radio stations that consisted of actual payments, and then we also did some trade-outs in an effort to get the most for our marketing and advertising dollar. Trade-out arrangements included an exchange for season passes. We worked also with KSNO, which is the AM station, on promotion and involved a contest—a weekly drawing. We would award a three-day Highlands lift ticket in exchange for plugs continually on the radio and the publicity of the contest itself.

Q. What was the primary focus of all of this advertising effort? What was its relationship to the Aspen Adventure Pack?

A. Well, the primary reason for doing all this was to attract people to Aspen Highlands and increase our lift ticket sales and exposure of the various options the skier had.

Q. Now, if we could move to the 1980-'81 ski season, you continued to function as the Marketing Director for Aspen Highlands that year, I take it.

A. Yes, I did.

Q. That's the year that's just been completed, the ski season that's just been completed?

A. Yes.

Q. Were there any changes in the advertising or [517] promotional approach that Aspen Highlands took during that year?

A. Yes. The major theme really changed over this past year. We mentioned many times that we are a family mountain; but prior to this, we often gave emphasis to the expert skiing terrain that we have. The previous year, the key word was superlative. Last year we started to again project the fun, friendly, family image that is available at the Aspen Highlands. We changed the format again of the Adventure Pack by going from American Express Traveler's Checks to all money orders for both High and Low Season, and we did a number of other promotions.

Q. You mentioned a change in advertising agency. Was there any change in the advertising style associated with that?

A. By changing agencies, we attempted to obtain more continuity among the various ads that we run. When you see the exhibits—and in fact, I suppose you have seen them—they are more of a graphic design. There is a continuity among the various ads that we did run for the ski school, NASTAR, the Adventure Pack, master's class, and those types of ads all had a continuity. When you saw one, you could relate it to another.

* * *

[521] Q. You have mentioned the continuing effort to market the Adventure Pack. Could you take a look at, I believe it's Exhibit 82? Could you describe to the jury what that is?

A. Exhibit 82 again illustrates the 1980-'81 Adventure Pack. As you can see, it is much smaller. It is changed in style. It's maintained the graphics of the other advertisements we were using that year. The reason we reduced the size is so this in turn could fit in a larger envelope. Again this is done for the convenience of the people that are working with travel agents and tour operators.

The High Season Adventure Pack last year was all money orders. We had three $18 money orders instead of the American Express Traveler's Checks. In the Low Season we had two $18 money orders, which is the same we had the year before; so we used the money orders throughout the Adventure Packs last year.

Q. And the reason for the $18 amount of the money orders was what?

A. Again we were interested in considering this as a four-area ticket or a four-area opportunity. The daily lift rate for the Aspen Ski Corporation mountains last year was $18; so that pretty much dictates the form of the Adventure Pack. We try to keep that money order the same price as the daily lift [522] ticket so they can take it over to the ticket office and obtain a ski corporation ticket or use it in any other fashion—or ski extra days at the Highlands.

Q. Did the 1980-'81 Adventure Pack also include Aspen Highlands three-day ticket?

A. It included a three-out-of-seven-day Aspen Highlands ticket; so they could skip days at Aspen Highlands and utilize the other mountains and also included the three discount coupons we discussed before that would give them discounts on the NASTAR and ski rental and ski school.

Q. During the time that you have been the Aspen Highlands Marketing Director, have you on your own or have you been involved with others in trying to consider

alternatives to the Adventure Pack as a ticket system for Aspen Highlands?

A. We certainly have.

Q. Could you describe some of that process and some of the other options that have been considered?

A. Well, we have thought of again—when I first started—thought of the single-day ticket arrangement. I learned that a lot of these same ideas had been thought of by other people and have been declined by the Aspen Ski Corporation as acceptable—an acceptable of way of forming an Adventure Pack. There are other options available as far as eliminating the Adventure Pack and we decided not to eliminate the Adventure Pack for a couple of reasons. (1) It would eliminate the four-area capability [523] that a visitor to Aspen might have. Also, when we worked with travel agents and tour operators, if we went back to just a three-day—three-out-of-seven-day Highlands ticket and if that is sold through a tour operator or travel agent, we pay a 15 percent commission, as was mentioned before. That would not be the same price as the higher-priced six-day, three-area ticket that the ski corporation offers. We felt that the travel agent or tour operator would not have had as much incentive to sell a lower-price ticket for Highlands as opposed to a higher-priced ticket that they would get more of a commission on.

• • •

Q. And has there been any consideration given to changing the mix of tickets available in the Adventure Pack; that is to reduce the number of tickets that would have to be used at Aspen Highlands?

A. Yes, there were. There was some thought given to that. If we reduced the number of days required at the Highlands, it would throw the economics of the Adventure Pack way off. In the Adventure Pack, as you probably

would surmise, when we pay a 15 percent commission on the Adventure Pack, we in fact are paying the Aspen Ski Corporation commission for them. We are paying a commission on the money orders and the [524] Adventure Pack.

When you take the cost of the Adventure Pack—

Q. What was the cost of the Adventure Pack for last season?

A. The Low Season was $76, and High Season was $96.

Q. When you are looking at the economics of the $96 High Season Adventure Pack, I take it when that's sold through a tour operator or travel agent, there is 15 percent off the top of that.

A. Just the basic mathematics of that is if you take the $96 we receive for that, we pay a 15 percent commission of $96. That's subtracted. Then we subtract the three $18 money orders, which is another $54, which gets our so-called net down to a very low stage. If we increased the number of money orders in there say to four and decreased the number of days at Highlands to two, you can see what that would do to our problem.

• • •

[526] Q. Have you been able to enlist the cooperation of Aspen Skiing Corporation in any joint marketing projects during the time that you have been at Highlands?

A. The only—I think there might be two that are nominal type cooperative efforts. One is in reporting the weather, the snow conditions. As I recall, our Customer Service Department cooperates with them in reporting that to [527] the national wire services. The other one is a poster that was recently produced that this type has Aspen Highlands indicated on it, and we paid 15 percent of the cost of that. Those are the only two that I can think of.

• • •

[528] Q. Mr. Comstock in his testimony, which you have indicated you heard, related efforts in the nature of national tours or visits to various national ski centers to promote Aspen Highlands. Has anything along those lines been engaged in while you have been Marketing Director?

A. The first year I started, 1979-'80, I started in May and I believe right before I started as Director of Marketing, one of the personnel from the Marketing Department had just finished attending the ski group meetings. The following year, I attended a couple of ski shows. The Flatlanders would be an example; and I made some trips to California, St. Louis—I think those are the main ones. We participated economically in the ski group that year, but we did not send a representative.

I just returned from a ski group show for this year that took place in April and May and visited Miami, Atlanta, and Chicago. We had representatives from our sck [sic] school that had—well, Tom Williams, our Director of Skiing, visited Dallas. Our Assistant Director of Skiing visited Los Angeles and San Francisco for those ski group shows.

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[533] Q. And is part of that planning the resolution of how [534] or if and in what form the Adventure Pack is going to be offered for the Aspen Highlands next year?

A. We have given some thought to that matter, and quite frankly the determination is going to be made after the proceedings here. We are operating right now under somewhat of a handicap. One of the problems is the $22 ticket that we have heard of that's coming next year from the Aspen Skiing Corporation. We are not quite sure if we can survive with an Adventure Pack including the $22

money orders. It puts us in an awkward position at this point to proceed with any concrete marketing plans.

Q. Why is the $22 daily lift ticket a matter of particular concern?

A. Well, as I mentioned before, the Adventure Pack consists of money orders that are made out in denominations of the daily lift rate at the other mountains. Last year it was $18. Next year, I understand from the announcements it will be $22 per day. The announcement was made that the Aspen Skiing Corporation six-day, three-area ticket be $114. That means that we would have to, in regular season, price our Adventure Pack no higher than $114. We would have to include money orders in there no lower than the amount of $22 to provide the convenience again for the customer to ski the four areas in Aspen.

Q. That's $22 per day?

[535] A. Per day.

Q. For three money orders?

A. For three money orders; so the mathematics work out $114. That's less 15 percent of $114, less $66 in regular season; and in Low Season, it probably even gets a little more awkward. I understand the Low Season six-day ski corporation ticket that was publicized is, I believe, $90 for their Low Season. There, if we used the same format, we would have to take 15 percent of $90 and include 44, or ideally again $66 worth of money orders. I don't think it would work out. I think we would end up losing money, and it wouldn't be worth it; so that's one of the considerations that we are taking into account at this time.

• • •

Q. Have you been able to arrive at any package ticket plan that Aspen Highlands could offer for the [536] upcoming season that would realistically continue to offer the possibility of skiing four mountains?

A. In an attempt to do that, I have talked to any number of travel agents, tour operators, customers to the mountain, the lodge owners. Not only have I not been able to—

MR. PALMER: Just a minute, Mr. McMahon.

I object. Hearsay. He's about to tell us what they have told him apparently.

THE COURT: I don't know if he is.

If you can answer the question without telling us what other people are telling you and see if you can answer the question directly, Mr. McMahon . . .

Hearsay is evidence from a third party who is not in court—an out-of-court statement offered for the truth of the statement. We want to try to avoid that.

If you can answer the question about your efforts, I think that was what was asked.

THE WITNESS: Your Honor, my attempt there was to say no, I have not been able to; and in seeking advice, no one else has been able to advise us of a better way.

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MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

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[549] Q. Now, you referred yesterday to the '79-'80 advertising, which I believe has been marked as Exhibit 79. Has that been shown to the jury yet—that package?

Mr. McMahon, the theme of that advertising seems to be "Ski the Best for Less." Is that a fair summary of that theme?

A. Yes. That is mentioned in some of the ads.

Q. And by "the Best for Less," you are talking about [550] Aspen Highlands as being the best ski area in the Aspen area?

A. I think it's twofold, the best being Aspen and also Aspen Highlands.

Q. And the purpose of that promotion is to put forward Aspen Highlands as being the best ski area in Aspen, isn't it—one of the purposes?

A. That could be interpreted, and the motivation behind it was the best, as I mentioned yesterday, was Aspen and the Aspen Highlands. It gave the opportunity to ski all four areas.

Q. And your primary motivation is to attract skiers to Aspen Highlands, however.

A. Yes.

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[551] Q. And in fact, some of your customers are located in Mexico, Canada, and around the world to some degree.

A. Yes, they are.

Q. So the Adventure Pack mailer was sent back to these people in their various home states and home countries?

A. That is correct.

Q. And the hope of doing so was that they would purhase the Adventure Pack?

A. That was the intent.

Q. Would you also agree with the previous testimony that these persons that you are seeking to attract are in comparison to the general populace relatively a mobile and affluent group of people?

A. That is the understanding I have from some of the [552] surveys that have been done.

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MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

[562] Q. Mr. McMahon, why does Aspen Highlands pursue national marketing efforts?

A. We still recognize there are two markets. There is a national market and then there is the sub-market which is Aspen; and we like to cover as much as we can within the parameters that we have and within the budget constrictions.

• • •

[564] Q. With regard to the single-day tickets offered now by Aspen Highlands or the three-day tickets offered by Aspen Highlands, are you familiar with very many instances in which the holders of a three-area, six-day ticket from Aspen Ski Corporation would also buy a three-day ticket from Aspen Highlands or a single-day ticket from Aspen Highlands?

A. No. In both instances, it would be very minimal. Once an individual buys a three-area, six-day ticket, he is really not there long enough to be able to avail himself of a single-day or let alone a three-day ticket at any other mountain without giving up again a punch on his ticket.

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Testimony of Kristin Lawrence

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[569] Q. Have you taught any of the children of the executives of the Aspen Skiing Corporation?

A. Yes.

Q. Who is that?

A. About three or four years ago, I taught the children of Tom Richardson, who is the President of the Ski Corporation, Jack Brendlinger, who is in charge of public relations, and Peter Dahl, who is in charge of the children's ski school [570] programs for the Ski Corporation.

Q. What did Mr. Dahl do at that time?

A. I think he was in charge of the children's programs up at Snowmass.

Q. Similar program to yours?

A. No. At that time, all the children were over 5 or 6 years old at the Ski Corporation.

Q. He was in charge of that?

A. I believe so. I am not exactly sure.

Q. How old were the children of Mr. Richardson, Mr. Brendlinger, and Mr. Dahl at the time you taught them?

A. I think they were all 4 years old.

Q. Did you teach their children how to ski?

A. Yes.

• • •

[571] Q. What has happened to your business in the last couple of years?

A. Well, it's starting to go down. It's gone down.

Q. Do you believe that the elimination of the four-area ticket has been a factor in the downturn of your business?

A. Yes.

Q. Could you explain that?

A. Well, I feel that most families like to stay together [572] at one area and ski so that they can keep tabs

on their children; and most parents are hesitant to leave a 3 or 4 year old at an area while they go up and ski another area. Also, a lot of parents like to come down during the day to check on their children and ski with them.

Since 1978, there have been a lot of parents wanting to put their children in Snow Puppies, but they have Aspen Skiing Corporation three-area tickets. When they realize their ticket isn't good at Highlands, they take the children to Buttermilk.

They have two choices: They can take their ski school business to Snowmass or Buttermilk, or they can leave their children with me while they ski at another area.

Q. So they like to take that latter choice usually?

A. No. Generally they don't. They don't like to leave a 3 or 4 year old alone.

Q. Don't the families that come with say a husband and wife, mother and father, come with a three-area, six-day ticket good only at the Aspen Skiing Corporation mountains—don't they have a choice of buying an individual daily lift ticket at Aspen Highlands?

A. It gets expensive if you have already paid for the ticket. They just don't behave that way.

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Testimony of Peter Sullivan

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[584] Q. Isn't it true that there was a certain amount of confusion that developed in the '77-'78 season, when there were two tickets offered? The three-area, six-day ticket by Aspen Skiing Corporation and the four-area ticket which included Highlands?

A. Yes. I believe there was some confusion.

Q. First of all, could you describe for the jury what was the difference between the two tickets?

A. Both tickets were around-the-neck tickets. As I recall, the Aspen Skiing Corporation six-day ticket looked similar to the Aspen Skiing Corporation three-day ticket, had a definite unique style that distinguished it from the four-area ticket. The three-area ticket did say, "This ticket valid only at Aspen Mountain, Buttermilk, and Snowmass," where as, as I recall, the four-area ticket was larger in size, clearly indicated that it was a four-mountain ticket, valid at Aspen, Buttermilk, Snowmass, and Aspen Highlands.

Q. You are familiar, Mr. Sullivan, are you not, with the fact that approximately 75 percent of the people that frequent [585] Aspen every year are return visitors, people that have been there before?

A. I have heard that.

Q. And those people that have been there before in that four-year period, '73-'74 through '76-'77, were familiar with the four-area ticket and they were not familiar with any other kind of multi-area, multi-day ticket. Isn't that correct?

A. Yes. That is correct.

Q. And isn't it true that the confusion that occurred in the '77-'78 season occurred because people came thinking they could ski all of Aspen and bought a ticket which they thought they could then ski all of Aspen with. Isn't that generally what the problem was?

A. Apparently.

* * *

[587] Q. Wasn't that the major concern he expressed from the very beginning of this ticket—that he thought

that the Aspen Skiing Corporation could do better than—could do better without Highlands?

A. That perhaps was his feeling, yes.

Q. Now, Mr. Brown and Mr. Richardson also felt that the Aspen Skiing Corporation was being associated with an inferior product. Isn't that correct?

A. That is correct.

Q. Did you feel that way, too?

A. I don't consider myself to be a quality expert. I was not hired for my skiing ability.

Q. Do your children ski?

A. Yes, they do.

Q. Do your children ever ski at Aspen Highlands?

[588] A. Yes, once—twice. My older son skied there twice.

Q. Have any of your children been taught to ski at Aspen Highlands?

A. As we discussed during the recess, you missed me when Kristin Lawrence was up here. My son was in the Snow Puppy Program.

* * *

[601] Q. Now, the next year, the first year there was no four-area ticket, it was good for six-out-of-six days. Isn't that correct?

A. When we offered a larger discount off the daily rate, we made that change.

Q. Okay. That isn't the reason you made that change that you essentially wanted to increase your revenue per skier?

A. We were—we wanted to get it back where it would be, because the ticket itself was more of a discount off the

daily rate than it had been when it was valid six-out-of-seven days.

Q. I understand that; but wasn't one of the purposes of making it valid for six-out-of-six, rather than six-out-of-seven, to increase the amount of revenue that would be derived if each skier were using that ticket?

A. That would have been in our minds, yes.

• • •

[603] Q. Let's explain to the jury how that refund policy worked. Isn't it true that the way it would be refunded is you take out your commission first—that is, if it had been purchased at ARI and there had been a commission of 10 percent—you take out $7.80 off the top.

A. Well, in various years that worked different ways.

Q. How did it work in '78-'79?

A. I can't recall whether that was a service charge year or whatever; but the point was that—well, it's similar to buying an airplane ticket through a travel agent. You know if you buy an airplane ticket through a travel agent and go to the airline to get your money back, they say, "Go see your travel agent," because they paid 10 percent on that. That's the [604] same situation we were in. We had paid a commission on that ticket; and since the tour operators—several of them would not give refunds directly—we felt it only fair that we at least recover the commission that we paid to the tour operator and then charge the customer the daily rate. So the customer basically was out of pocket for the daily rate; and if you bought the wrong—if the tour operator sold him the wrong ticket or inadvertently he bought the wrong ticket that he should go back to the tour operator similar to the way you and I would go back to our travel agent.

• • •

[606] Q. When you sought a refund on the six-day ticket, which was intended to be a ticket to be used all week, you would lose your discount off the daily rate. Is that correct?

A. Well, you know, it's like three cans of paint for the price of two. You don't take one back and get your money back.

Q. All right. And if you sought a refund of the ticket that was a commissionable ticket, essentially the consumer would have to in essence pay you that commission. Isn't that correct?

A. That is correct.

Q. Would you agree that that ticket refund policy makes it more difficult for a skier who wants to ski one day at Highlands and who has purchased a three-area, six-day Aspen Ski Corporation ticket to in fact ski at Aspen Highlands?

A. I would say it makes it more difficult for the skier who bought that ticket through a tour operator. I don't see how it makes it difficult for a skier who walked in and bought it over the counter.

Q. For the person who walked in and bought it over the counter, that person would still lose their discount; isn't that correct?

A. Well, yeah, if they didn't use it six days.

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[607] Q. Now, in the '77-'78 season, again the Aspen Skiing Corporation offered a three-day ticket. Do you recall that?

A. Yes.

Q. And that three-day ticket was good three out of four days. Isn't that correct?

A. That is correct.

Q. And it was discounted off the daily rate. Is that correct?

A. Yes.

Q. And moving to the '78-'79 season, when the four-area ticket was eliminated, isn't it true that the management recommended the complete elimination of the three-area ticket—three-day ticket?

A. That is correct.

Q. And isn't it true that one of the reasons for the [608] management recommending elimination of the three-area, three-day ticket was to encourage customers to buy more three-area, six-day tickets?

A. Yes. We saw the popularity of the three-day ticket had increased the year before substantially.

Q. So one of your purposes in recommending elimination was to get people that had bought a three-day ticket previously to buy a six-day ticket at Aspen Skiing Corporation in the '78-'79 season. Isn't that correct?

A. If they so desired.

Q. Would you agree that a person that had purchased a three-day ticket at Aspen Skiing Corporation the year before would have an opportunity to go ski at Aspen Highlands the other three days?

A. Yes.

Q. Now, isn't true that in that particular year the three-day ticket was not advertised by the Aspen Skiing Corporation?

A. That particular year being what?

Q. '78-'79.

A. Okay.

Q. It was not advertised, was it? The availability was not advertised?

A. We intended not to offer it, I believe.

Q. And in fact it was not offered during the beginning [609] of the season. Isn't that correct?

A. That is correct.

Q. Is it true that there was tremendous skier dissatisfaction and comments over that particular issue during that particular point in time?

A. To turn it around, there was considerable demand for that ticket.

Q. I'll accept that. And in fact, in February of the '78-'79 season, as a result of that tremendous demand, you put back in the three-area ticket.

A. Yes. I am not sure as to the month.

Q. Three-area, three-day ticket?

A. Yes. I am not sure as to the month.

Q. It was actually, though, well into the ski season. Isn't that correct?

A. It might have been January; it might have been February. I don't recall.

• • •

[613] Q. So during that year when both the four-area ticket was available and the three-area, six-day ticket offered by the Ski Corporation mountains was available, approximately twice as [614] many four-area tickets were purchased by consumers than three-area tickets?

A. Not quite twice.

Q. All right. Not quite, but close?

A. Within 4 percent.

Q. All right. Now, your total revenue—your total multi-day, multi-area revenues as a percentage of your lift ticket revenues would have been about 35 percent. Is that correct?

A. Approximately.

• • •

Q. Okay. Now, what were your total lift ticket revenues in '78-'79?

A. Total gross at 14.9 million.

[615] Q. What were your total three-area, six-day revenues?

A. Approximately 6.4 million.

Q. Would you agree that then approximately 44 percent of your total revenues were attributable to Aspen Skiing Corporation three-area, six-day sales?

A. 44, did you say?

Q. I said 44.

A. 43.

• • •

[622] Q. Mr. Sullivan, isn't it correct that the three-day ticket was not advertised in the '78-'79 season?

A. That is correct.

Q. And was not put into effect until later in the season?

A. That is correct.

Q. The question is once it was put back into effect it was no longer a discounted ticket. When you say no longer, that is what confused me. It was not discounted when we put it back into effect.

Q. So in other words, if somebody bought that ticket they would pay three times the daily rate.

A. That is correct.

Q. Okay. Now, we have heard a lot of testimony about tour operator sales. Could you tell me for the year '78-'79 what percentage of the Aspen Skiing Corporation sales are tour operator sales of your total?

A. Approximately 19 percent.

[623] A. Okay. In '79-'80, what percentage?

A. Approximately 14 percent.

Q. And in '80-'81, would you agree again that it was approximately 14 or 15 percent?

A. I don't have anything here to agree with that.

Q. Did those numbers in terms of their magnitude make sense to you? In other words, is it true that 85 percent approximately of the people that buy your lift tickets buy them over the counter a the window rather than through tour operators?

A. At this point in time, between 80 and 85 sounds right.

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[626] Q. Okay. Now, do you agree that the Adventure Pack would be less desirable to a potential skier if the Aspen Skiing Corporation would not redeem the coupons than if they would?

A. Yes. I think I agree with that.

Q. It made it more difficult, did it not, Mr. Sullivan, for a skier to have to go to a restaurant or a sporting goods store or whatever to redeem that coupon and then buy a lift ticket.

A. And conversely, it made it much easier for us.

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Testimony of Valorie Britt

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[677] Q. Now, were there ever any instances during the '77-'78 season when Highlands ticket sellers would send people over to the Aspen Ski Corporation to get refunds?

A. Now, this is the year after the four-area ticket was—

Q. No. This is the last year of the four-area ticket, '77-'78.

A. Well, there really wasn't any point in sending a customer to the Ski Corporation, because the corporation couldn't do anything more than we could do. We would take the refund application. It was silly to send someone on a wild goose chase, when we could do it just as easy.

[678] Q. Did that ever happen to your knowledge?

A. Not from any of my ticket sellers.

Q. Would you do something like that?

A. No. I mean they have enough problems just coming to Aspen. Why send them running around town?

Q. Now, were there problems during the 1977-'78 season with people coming to Highlands who had been sold a three-area ticket but wanted to ski four areas?

A. There was some confusion because a lot of customers would come thinking they had purchased a four-area ticket; and then when they got to the Highlands to ski with it, they in effect had a three-area ticket which they couldn't use at the Highlands. Primarily these instances were with people that had purchased their tickets through Aspen Reservations, at least to my knowledge it was, and then there wasn't much we could do with the customer. I tried

several times to contact Aspen Reservations to see if they could bring out tickets; but most of the time these happened on weekends when I couldn't get ahold of anyone at Aspen Reservations.

Q. What would the people do?

A. Besides be furious, they sometimes, if the customer seemed to be really irate—I would give them a comp ticket for the day just because it's already ten or eleven o'clock and he's wasted half the day of skiing. I had to direct them to either the Skiing Corporation or Aspen Reservations if they [679] wanted the four-area ticket, or just suggested they buy one and try to get a refund later from the party that they purchased it from.

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Q. Turning to the '78-'79 season for a moment—this is the season that there was no four-area ticket offered jointly among the various mountains in Aspen. Were there ever any problems experienced that year with people showing up at the Aspen Highlands with an Aspen Skiing Corporation three-area ticket wanting to ski at Highlands?

A. The people that I came in contact with were normally customers that had in the past been able to buy a four-area ticket. Maybe to start off a little differently, most of the customers were directed by lift operators to the Skiing Corporation—you know—with their three-area ticket; but sometimes the customers were repeat customers and they would eventually get to the ticket office because they were so upset that they had the wrong kind of ticket.

Q. Would you handle these problems?

[680] A. Those were handled by me. The ticket seller would call me out to the counter and there wasn't anything I could do with a customer then, other than send him back to the Ski Corporation.

Q. And did you do that?

A. Yes.

Q. Now, did these people ever buy an individual daily lift ticket at Highlands after they had purchased a three-area, six-day ticket?

A. Well, I can't say that they never did. It's just most of the time they would just leave and ski over at the Corporation. They had a ticket for the Corporation, or I would suggest that they buy a daily ticket if they wanted to and then handle the refund later with the Skiing Corporation; but most of the time they didn't want to spend more money, because if it was just one person in the family, he might be willing to spend the 15; but usually there was a wife and three kids, so there wasn't any point in it.

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Testimony of Buzz Fedorka

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[703] Q. Are you aware of any changes in the program at Highlands—the NASTAR program at Highlands that would explain the decrease that you have described?

A. We've made every effort to increase it by offering things to make the program more attractive. One thing that has been in our Adventure Pack is that we offer a discount coupon to make NASTAR an attractive event. We have even upgraded the quality of the what we offer by offering a coaching instruction program; but it continues—we haven't declined in the offering that we have. We have provided a better event, but we have less customers.

* * *

Testimony of Lee Miller

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[718] Q. No. The question is have you encountered guests who have purchased a six-day ticket—six-day, three-area ticket and then who have also purchased single-day tickets at Aspen Highlands?

A. And you are asking me have I heard of that?

Q. Yes.

A. I am going to have to say no to that.

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Testimony of Alan Andreason

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[764] Q. Let's focus for a moment on the destination market, the Level 3 that you have described. First of all, who are the skiers that end up in that particular market? Can you tell me something about these skiers?

A. Sure. If you look at again the statistics that are available in these lodging studies and the lift studies that I talked about earlier, the Aspen skier apparently is a well-educated, relatively affluent, experienced skier who has skied a number of times in the past, who typically describes himself or herself as a high intermediate or better skier, although whether or not it's probably giving one the benefit of the doubt in terms of skiing ability is not clear.

They have in the main—they are from outside of Colorado. They have come a long distance. Most of them come to Colorado or to Aspen for a typically a week's stay.

Now, that's the typical skier. That covers sort of quite a broad range. There are a kind of—particularly in terms of skill—there are a lot of people there who are beginner skiers, low intermediates, as I am.

Q. What are these particular skiers looking for when they are making their choice as to whether to come to Aspen—or when they do make that choice, what are they looking for?

A. The kinds of things that these particular customers appear to be looking for are of course relating to skiing items. They are looking for good snow and good skiing conditions; and [765] the Aspen area certainly has a reputation for having super powder and sort of reliable powder—that is with the exception of some years like the last one, I guess. You can pretty well count on there being snow there. You don't want to plan a vacation where you have to worry about if there is really going to be snow, as I guess there is a problem in New England, for example, when you have made your reservations in advance and it turns out at the end of January that there isn't any snow. That's a problem.

So the kind of things they are looking for first of all are good snow conditions; secondly, because they are relatively good skiers and because a lot of them—the vast majority of them—excuse me—come in some kind of group, either with a family or with a club or a group of friends, they are looking for variety. They are looking for a variety of skiing experiences, partly because they are going to be there for a week and they are going to get bored if they ski in one area for very long; and also they come with people of varying skills. They need some variety of slopes so that if they want to go out and ski the difficult areas their spouses or their buddies who are just starting

out skiing can go on the bunny hill or the not-so-difficult slopes. So they are looking for good snow, a variety of ski runs. They are looking for—since skiing only takes up part of their vacation—they are also looking for lots of interesting after-ski life, good restaurants, a variety of [766] shops, kind of an interesting atmosphere to go to.

Many of them seem to be looking for a kind of no-hassles kind of vacation. For many of them, it is getting away from work, getting away from the rat race back home; and they'd like to get out to an area where they don't have to make any decisions, where it's pretty easy to get to the slopes, where it's pretty easy to get in and out of the area by airlines or whatever. Aspen, I guess, isn't too great that way, as I discovered one Saturday. I guess those are the principal things that they are looking for, my research suggests.

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[768] Q. Do Aspen Highlands and the Aspen Skiing Corporation mountains compete at this destination market level in your view?

A. Well, in my view they don't really compete with each other. Now, they both have separate programs to try to bring people to Aspen. Also they cooperate in a lot of marketing programs, again to try to attract people to Aspen through the Chamber of Commerce, through the Central Reservation Systems, and so on, that are essentially designed to get people to come to Aspen. But in that sense they are cooperating together. They are not competitors in that sense, at Level 3. They are cooperating together to compete against these other areas to bring people to Aspen.

The competition, as I see it, between the two organizations is at that last level.

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[770] Q. Could you describe—basically describe the activities, if you will, of the skier once he arrives in Aspen in terms of his choices of areas to ski?

A. Well, what happens once they get to Aspen, they typically are there for six days. A very substantial proportion [771] of them are there for at least six nights of lodging. Something like 85 percent of them fit under that category, and so they are typically locked into some kind of accommodation for six months—six weeks—

Q. Six days.

A. Six days.

Q. Do you want to take a drink of water?

A. Yes. I should see whether it's longer than my usual 50-minute lecture. Okay.

For six nights they are locked into the area and most of them—something like 76 percent of them—stay in Aspen for the entire ski vacation. Professor Goeldner's data suggests that 23 percent of them may in fact go somewhere else as part of that vacation; but although the data don't suggest it precisely, I expect for most of those, it's after they have been to Aspen or before they have been to Aspen. They may go somewhere else for a few days. That's partly because many of them indicate that they don't need a car while they are in the Aspen area. Something like 69 percent indicate that a car is not necessary.

That is one of the nice things about Aspen, as I said earlier. Everything is convenient. There is a bus system.

Secondly, Aspen is geographically isolated. It is up at the end of the highway. In the wintertime, I gather that that pass at the other end is blocked. You can't get through [772] that way; so to go anywhere else of a comparable nature—you have to remember these are very experienced people. The comparable thing is not a rinkydink resort. They are thinking of Vail, and although I have never tried it, I gather it's two and a half, three hours away. They

are kind of locked into the Aspen area for six days, and they usually at that point sort of have to make some decisions as to where they are going to do their skiing.

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[773] Q. Is price important in your view in terms of their decision which area to ski, once they arrive in Aspen?

A. Yeah. Once they arrive in Aspen, I don't think price is particularly important. I thought about that, of course, because obviously one of the questions—you know—as I saw it, is that Aspen Highlands was put at a disadvantage because they couldn't offer—or at least it was hard to offer—the four-area ticket after the Aspen Ski Corporation sort of bowed out of that arrangement. The question was could they cut price.

Well, if you look at this sort of lift ticket—Remember that these people are spending on a per-day basis something like, if you don't include the transportation costs, they are maybe spending—what did I say? Something like five or six or seven times just the lift ticket cost itself, that five-to-one figure that I was talking about earlier, which doesn't precisely count lift tickets. The actual expenditures beyond the lift tickets is something like eight or nine to one; [774] but if you think of say 25 percent reduction in the lift ticket price—that is, if Aspen Highlands cut their lift ticket price 25 percent—the result of your total cost for the day might be a 2- or $3 reduction in total cost; so when people talk about a total day in Aspen, which most of them see as a pretty darned expensive day, cutting the price of a lift ticket 25 percent is not going to make a lot—a heck of a lot of difference in terms of where they are going to ski. They are going to be looking for variety, convenience, and sort of no hassles, which is one of the things they seem to be looking for.

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Q. What has been the effect in your view of the elimination of the joint four-area ticket that was offered through the '77-'78 season in the Aspen market?

A. Yeah, well, the effect in the Aspen market was, of course, at this fourth level. I believe it made the task of [775] Aspen Highlands in marketing to these customers, as I understand them in terms of what they are looking for, much more difficult because these people were looking for—and one of the things that was sold to them—was sort of this Aspen multi-mountain experience. Many of them wanted to ski the four mountains, and it just became much more difficult for them after the '77-'78 period.

Q. How do you know they wanted to ski four mountains?

A. Well, there are a couple of pieces of evidence there. One is again from the Aspen Skiing Corporation's records. Their data show that the year in which they offered themselves both a four-area ticket—four-mountain ticket and a three-mountain ticket—their sales records show that the four-area tickets out sold the three-area tickets at a ratio slightly less than two to one; so that would indicate to me that a lot of people would prefer to ski the four areas. Also, the most recent in-room study—

Q. Before you go into that, perhaps we could have Exhibit 75 handed to you so that you can tell the jury which study you are referring to.

A. Thank you. I am referring to a study entitled "Aspen In-Room Survey, 1979-'80," by Professor Goeldner and Alleta Stamp.

Q. Okay.

A. And there is a most interesting table in here. I [776] forget the page.

Q. Page 41?

A. Nope. Page 36.

Q. Close.

A. On page 36, one of the questions that was asked was whether or not there were any areas in the Aspen complex that people would like to ski but couldn't—you know—won't ski.

Q. What year was this survey done? That's what I wanted to make clear.

A. This was done in '79-'80.

Q. There was no joint four-area ticket in that particular year?

A. That's correct. There was no four-area ticket available in '79-'80.

Q. Go back again and tell the jury what the question was that was asked. I am sorry to interrupt you.

A. I guess I would have to look at the questionnaire precisely to see how it was asked, but as I understand the particular table the question was were there any of the mountain areas in Aspen that you would have liked to have skied this time around on this particular destination visit to Aspen but you won't be skiing there.

Okay. According to this, 53.7 percent of the respondents said that Aspen Highlands was one of those areas that they would like to ski.

[777] Then Professor Goeldner went on to ask what were the reasons that you won't be skiing this particular area that you have just mentioned in the study. About 40 percent of them—39.9 percent of them—say that their lift ticket wasn't good on those other mountains.

I would take those two things as evidence that there were a lot of people who felt disappointed that they didn't have this four-area ticket capability that had always been there in the past.

Q. Why didn't they buy a—why didn't they buy an individual daily lift ticket at Aspen Highlands?

A. Well, for two reasons. For those who had bought six-day tickets, I think despite the fact that they are all relatively affluent—a lot of them are relatively affluent when they go to Aspen—they are all sort of managerial types and they seem to be pretty cautious. Certainly the comments that I have had from individual skiers and from the tour operators, club people that I have talked to—they are pretty careful with their money and they would feel—these are the people who will buy the six-day, three-area ticket that giving up one of those days and going over to ski at Aspen Highlands would mean spending extra money. You know, they would kind of lose out that way. For many of them, skiing the seventh day—it's a six-out-of-seven-day ticket. Skiing the seventh day—probably most of them are exhausted and want one day off anyhow. [778] Many of them are involved in travel plans, getting in and out of Aspen. So it would really be a strain on them in that seventh day to go to Aspen Highlands.

For those who buy individual tickets, it's sort of hard to know about that particular case. I expect a lot of those individual tickets were for the spouses, the people who didn't ski quite so often and who were going along with expert skiers in those particular other areas—you know—whether or not these would have gone to Aspen Highlands kind of on their own and whether when the four-area ticket disappeared they would have—in its old form, at any rate—these people then would revert to buying individual tickets.

The proportion of sales at Aspen Highlands—I'm sorry—Aspen Skiing Corporation that were individual ticket sales, at least as far as I read this data, didn't go up appreciably. If people who missed out on the four—area capability and instead bought individual—you know—reverted to buying individual tickets as your question implied, that ought to show up in increased individual ticket sales at Aspen Ski Corporation. That doesn't seem to be the case.

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[779] Q. Let's put us back in that position in time. What in fact should they have done at that point in time to try to compete within this fourth level Aspen market?

A. Well, the first thing that I would have done, which is exactly what they did, was to say, "Look: My study of the customers in this market suggest that they really want this four-area capability. If I am going to compete with Aspen Ski Corporation, which owns 75 percent of the capacity in this area, I've got to figure out some way that people who want to ski at Aspen Highlands can ski these other areas as well." So they put together the Adventure Pack, which had some nice [780] features to it, which a lot of those who understand the Adventure Pack, I think, feel make it a pretty good deal. In some ways, it is better than the old four—area ticket, because I guess Peter McMahon explained yesterday or the day before the nature of this Adventure Pack.

One of the nice features for those who understand it, if you will recall, is that it had the feature where you skied three days at Aspen Highlands out of seven and then you get some coupons or money orders that you could either use to ski at one of the Aspen Ski Corporation's three-mountain areas or you could turn these in and buy yourself a sweater or something or a dinner in town. A lot of people seem to appreciate that flexibility, because it didn't lock you into skiing. That is, if you got to the fourth day and you were exhausted or sunburned or—you know—somebody else just in your party decided they didn't want to ski that day, you hadn't sort of spent your money on ski lift tickets. You could take the coupons or the money orders and spend them doing something else. That was kind of an added flexibility. A lot of people seemed to appreciate that.

Q. What about their promotion and advertising?

A. Well, what they did at that period, as I understand it, was put a lot of their efforts into explaining the

Adventure Pack. One of the problems with the Adventure Pack, as I have said when I said, "Once you understand it . . ." is it's hard [781] to understand. I got this from a lot of the tour operators and a lot of the people in town that I talked to. A lot of the individual skiers who kind of thought about getting an Adventure Pack told me this. It's just darned complicated and a lot of tour operators, at least as they reported it to me, think a lot of tour operators really didn't take the trouble to understand it and market it very well.

So what Aspen Highlands did was to try to get out into the field, to go to all the various shows where the travel agents and tour operators would meet, to try to explain the Adventure Pack to them. What they tried to do, since there was the Central Reservations System then—they tried to make sure those people understood it. They tried to explain it, I gather, around the Aspen community, to minimize the amount of this kind of confusion which they recognized was a problem for them.

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[784] Q. In your estimation, could—Well, let me ask you this: Why did the market share go down in light of these efforts?

A. Well, I think that basically two things occurred: One is that a lot of people wanted the four-area capability conveniently. It was—you know—even if they understood the Aspen Highlands Adventure Pack, it still involved, if they wanted to ski the four areas—it still involved skiing Aspen Highlands and going through this rigamarole of exchanging the coupons for other tickets, which meant every morning they [785] couldn't go right onto the slopes and flash their ticket. They had to exchange it; and that was a hassle for a lot of people, and a lot of people going to Aspen wanted to get away from it. They wanted to be there for six days or seven days and have no worries and relax, and this was an added hassle.

Given that there was available an alternative that gave them at least three mountains—you know—the logical choice that some people evidently made was to chose [sic] the somewhat easier approach.

Secondly, it was confusing. The market share went down, I think, because a lot of these middle men didn't particularly do a good job of explaining the Adventure Pack. A lot of people never really understood what the opportunity was and I think those were the two principal reasons that the market share went down.

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[786] Q. Well, how does a single area like Aspen Highlands in a market with three other areas owned by the same company offer a four-mountain capability?

A. I don't see how they could do it any other way than they have tried to do it, as long as the other people don't [787] cooperate. I mean they have got 75 percent of the action and 85 percent of the market, and it doesn't leave Aspen Highlands very many options.

Q. In your estimation, could Aspen Highlands have effectively responded by increasing its promotion at the national level?

A. No, because—you know—just the arithmetic would suggest that Aspen Highlands—really, I would not advise them to put very much money into national programs, except to help explain the Adventure Pack and so on to tour and travel operators, because I wouldn't put a lot of money into marketing at the third level, if I were Aspen Highlands, because if it gets a lot more people coming to Aspen, the beneficiary is going to be the Ski Corporation because they have got 85 percent of the market. So I don't want to spend $1,000 promoting Aspen as a destination resort—you know—if the guy around the corner is going to be the major beneficiary of that. So I would put most of my resources into this competing for people once they get to Aspen.

Q. Now, you mentioned the Aspen Skiing Corporation not cooperating in the four-mountain capability. Did that have any effect in your view on Aspen Highlands' ability to compete in this Aspen market?

A. Yes. Well, I have already described the difficulties and disadvantage they were put to by having to offer the Adventure [788] Pack. I gather some of the early efforts that the Ski Corporation engaged in to sort of discourage the translating of coupons into days of skiing at the Ski Corporation also added an additional burden to Aspen Highlands; that is, they had refused to honor the coupons that Aspen Highlands had arranged to work out with the local banks so that Aspen Ski Corporation could get its money right away, which would be almost like scrip or almost like money. But the fact that they wouldn't honor that made it difficult for Aspen Highlands.

Q. And do you know how many of the people that come to Aspen Highlands on a yearly basis are newcomers?

A. Yeah. About 23 percent, according to Professor Goeldner's data, roughly, have never been in Aspen before. These first-timers come, you know, sort of for the Aspen experience, the Aspen mystique.

Q. When they decide to come to Aspen, when they make that choice at Level 3 that they are going to choose Aspen and come to Aspen, what is it that they are essentially buying?

A. Well, a lot of those things that I talked about earlier. I think a lot of them are probably buying the kind of things that they can tell the folks back home they've experienced. They skied all the mountains that are in Aspen. They have done the restaurants. They have done the night life. You know, they have seen a hippie or two—you know—that kind of thing.

[789] Q. Does the national promotion of the Aspen Skiing Corporation in the years since the elimination of the

four-area ticket—does that have an impact upon the choices of these newcomers that come to Aspen?

A. Yeah. I would think that the materials that I have seen, that Aspen Ski Corporation put together, has been promoting, would lead a newcomer to believe that there are really only three mountains in the Aspen area; that is, that they identify the Aspen experience with the Aspen Ski Corporation's three mountains. So it may well be that a lot of people who have never had explained to them the Adventure Pack, who have seen pictures of the mountains—not that picture but other pictures of the mountains in the Aspen area in which there doesn't appear to be an Aspen Highlands anywhere—and of course none of the Ski Corporation's literature mentions Aspen Highlands. As a result, they may very well believe that buying the three-area ticket, as many of them probably do in the first day or two before they really know what's going on in the Aspen area—they think they may be buying Aspen.

Q. Now, could you describe for the jury the importance of newcomers, if you will, to a competitor at the fourth level such as Aspen Highlands being able to maintain and enhance its market share?

A. Well, a lot of these people—we are all sort of creatures of habit. Everybody who comes to the Aspen area again [790] and again will develop certain preferences. You know, they will certainly end up preferring one particular area vs. another; and they may sort of move up to the tougher mountains, although I don't know whether people like me would ever get to ski down Ajax, which is kind of frightening. But if you don't get them when they first come, in effect they may get the habit of getting—of going somewhere else. A lot of us are kind of lazy, and given that a lot of these people are looking for a no-hassles vacation when they decide to come to Aspen, as many of them do, as repeat customers they may go back to the place that they started out from; so if Aspen Highlands doesn't

get a crack at them, so to speak, when they come as brand new people to Aspen, that puts them in not such a great—puts them in or at another disadvantage in the long run.

Q. Besides these things that you have already mentioned, does Aspen Highlands have other disadvantages due to the activities of the Aspen Skiing Corporation since 1978?

A. I guess those are the only ones that I can think of at the moment that I have mentioned so far. The only other disadvantage that I can think of is the—you know—the fact that Aspen Highlands can't easily increase its capacity. You know—as I guess has been testified to here, it is an awfully darn difficult thing to add extra mountains or extra capability at your area, at least very quickly; and the fact that this big competitor down the road and its three subsidiaries or [791] divisions—well, that kind of keeps you from 75 percent of the action, or it makes it difficult for you to give your customers access to the 75 percent of the action, and that really puts them at a disadvantage.

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Testimony of Norma McNeill

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[809] Q. What's the normal period for which you can book the accommodations?

A. In Aspen it is seven nights.

Q. Is that pretty much exclusively the case?

A. For us it is, yes.

Q. Why, in your experience, is that the case that it is a seven-night stay that is involved in Aspen?

A. Well, working with the lodging community in Aspen, they prefer a seven-night stay vs. a three- or four-night stay. We do consider Aspen a destination resort, and we market it as [810] such.

Q. And then in marketing a ski lift ticket package, does that correspond to the seven-day stay of a guest in Aspen?

A. Yes. We market a six-day ticket to go with the seven-night stay.

Q. And what's the reason for marketing a six-day ticket rather than individual tickets or something to that effect?

A. Economy. It's cheaper to buy a six-day ticket rather than individual tickets and also convenient to the client.

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Q. If a particular skier or a particular person booking a package decides to come to Aspen, does the purchase of a ski package through First Tours or through a similar tour operator involve any additional decisions on their part?

A. Yes.

Q. Could you tell the jury what those decisions would be?

A. Well, the type—first of all, he would have to ascertain the type of accomodations he is looking for—the lodging. Then the lift ticket choice also. We have two choices.

[811] Q. And what are those two choices at present?

A. The Aspen Ski Corporation six-day ticket or the Highlands Adventure Pack.

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MR. MAYWHORT (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[814] Q. So assuming I am an individual located outside of the State of Colorado, again, and I am calling you and asking you to put together various packages for me as alternatives, would those various packages include optional lift tickets?

A. A lift ticket is not optional in a package. When you purchase the package, it has basic elements of lift tickets and lodging. The other optional elements would be car rental or trip cancellation insurance.

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Testimony of George Madsen

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[839] Q. Yes. Now, could you tell me during this period of time, '78-'79, what percentage of the visitors that would come to Aspen would be newcomers?

A. I really can't recall the Goeldner surveys: but we normally said it ranged from something like 66 percent on an early survey three or four years ago to something over 70 percent.

Q. That were—I'm sorry.

Did you say have been there before, or newcomers?

A. It would have been the inverse of that; so something around 25 to 30 percent.

Q. All right; and is it true that a very high percentage of those come by commercial air?

A. Oh, yes.

Q. Through the Denver Stapleton Airport?

A. Yes.

Q. And fly Aspen Airways?

A. It ranged from 33 to almost 40 percent.

Q. Now, are you familiar with the fact that there was a sign in the Aspen Airways waiting room of the Stapleton Airport?

[840] A. Yes.

Q. That was created when the ARI was a joint venture? Do you recall that?

A. Yes, I do.

Q. Do you recall who paid for that sign—

A. It was paid—

Q. —when it was originally created?

A. I think it was paid—it was an ARI project. That's right. So it was paid in the normal promotional frame; that is, we split by the revenue distribution between the Ski Corporation—Aspen Skiing Corporation and Aspen Highlands.

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[844] Q. Next slide. What about that one? Can you read the changes there for us?

A. Well, the one change—the major change was in the reservations number, which used to be 925-4000. Now it's 925-9000. In addition, the bringing it up to date meant changing the six-day lift ticket good at—it used to say "Four big mountains," and now it says, "Three big mountains," and Aspen Highlands is left out.

Q. Where did Aspen Highlands used to be on that sign? Was it where it says, "as well as"?

A. I would think so, yes.

Q. That's another picture—a bigger picture. Now, when this sign was originally put up, was the idea when it says

there is only one Aspen to again sell the entire community—the entire resort?

A. Yes. That's the purpose of the catch phrase; that Aspen is unique and also it is singular and that it is all one community.

[845] Q. So when "Aspen" is used in that advertising, it was intended to refer to the resort. Is that correct?

A. Correct.

Q. Now, the last paragraph there where it says, "Three mountains"—what did that used to say?

A. Four mountains.

Q. Now, this sign—what were the purposes from the Aspen Skiing Corporation's point of view of changing this sign?

A. Well, it started out for changing the phone number to the new Central Reservations number. Because of the other changes necessary, we were obviously touting our facilities.

Q. When you say, "our facilities"—

A. Aspen Skiing Corporation.

Q. Was the purpose to facilitate the sale of your three-mountain ticket?

A. Yes.

* * *

[847] Q. Mr. Madsen, the first timers, or 25 percent of the people that come to Aspen every year that have never been there before, having made their destination choice and having arrived in Stapleton Airport on their way to Aspen, looking at that sign—how many mountains would they think there were?

A. Three. Well, I'm sorry. I think it shows four mountains, but it talks about three.

* * *

[849] Q. In terms of your efforts at the Level 3, the destination level to get people to choose Aspen over Vail, did you continue as you had in the past years to market the whole Aspen community?

A. It depends on what promotional channel you are talking [850] about. I would say that I am sure from an economic standpoint you could say that we spent more time and effort to market the Aspen Skiing Corporation; but I would also have to point out that that wasn't—there wasn't that much greater difference from our altruism from promoting Aspen as a community, and we had done this for a number of years, as a matter of fact.

* * *

[851] Q. Now, does that particular brochure—the '79-'80 brochure—was that directed by the Aspen Skiing Corporation at the various national shows that you may have gone to?

A. Yes.

Q. Okay. Would that have been given to tour operators and travel agents and skiers?

A. Oh, yes.

Q. Given to skiers?

A. Any way we could.

Q. Now, does that brochure have a picture of Aspen—a map of Aspen, as some of the previous brochures did?

[852] A. Yes, it does.

Q. And does it show—does the map itself show all four mountains in Aspen?

A. Yes, it does.

Q. Does the map itself label all four mountains in Aspen?

A. No. It only labels Aspen Mountain, Buttermilk, and Snowmass; and the prices on the lift rates and ski school rates on the back only pertain to those three mountains.

Q. All right. How many people would you say would see that brochure?

A. I'm trying to remember.

Q. How many you produced?

A. How many we produced? Yes. As I remember it, we just about sold out on it. I'm sorry. I have minor blocks in my brain today. I am guessing.

Q. That's all right.

A. I am guessing about 250,000.

Q. Now, you mentioned a film that was produced. Was there a film produced after the elimination of the four-area ticket that you are familiar with?

A. Oh, yes, the Buddy Hackett film.

Q. The Buddy Hackett film? Is there another name for it?

A. "Aspen in January."

* * *

[854] Q. Now, is it true that this movie promotes the Aspen resort?

A. Yes.

Q. Is it true that this movie promotes only the Aspen resort having three mountains, rather than four mountains?

A. Yes.

* * *

[855] Q. And is it true that this movie was intended to attract people—Dr. Andreasen's Level 3—attract people to come to Aspen?

A. Yes.

Q. Newcomers viewing that movie—how many mountains would they think there are in Aspen?

A. If all they knew about Aspen was the movie, what they saw in the movie, I assume they would just assume there are three of them.

* * *

[857] Q. Now, what is the theme of that brochure?

A. It's called "Mountains of Fun."

Q. Is that the whole thing?

A. "Aspen" is the headline. "Mountains of Fun." The [858] mountains are fun are featured in three sections, one of which is devoted to Aspen Mountain, one to Buttermilk, and one to Snowmass. There is some other material in the brochure. including a four-mountain map; but only Aspen, Buttermilk, and Snowmass are identified.

* * *

[859] Q. Why don't you identify that directory?

A. This is the Skier's Directory for 1981.

Q. And who publishes that directory?

A. I believe this is the one that is published in New England—Rhode Island, as I remember. It is meant for national distribution. You have to buy this publication or subscribe to it or a annual basis, but there is only one publication.

Q. All right. Is that a publication—or publications [860] like that which the Aspen Skiing Corporation have utilized previously for national advertising?

A. Yes. We used this several years.

Q. Now, is it true that that particular advertisement again shows the map with four mountains?

A. Yes.

Q. And is it true that that again labels three mountains?

A. It omits Aspen Highlands.

Q. Where is the Buttermilk label on that ad? Can you identify which mountain?

A. It's right in the middle of the page. It is centered with Aspen Mountain on one side, Snowmass on the other, and it comes roughly over both Aspen Highlands and Buttermilk.

Q. Now, a newcomer that would get that publication on the national market, perhaps thinking they would come to Aspen—do you think it would be possible that they would think that Buttermilk included Aspen Highlands?

Mr. PALMER: It calls for speculation.

THE COURT: The objection is sustained.

Q. What would you think, looking at that magazine, if you had never been to Aspen before?

A. Having been involved in Aspen promotion for many years I wouldn't give that one a second thought, because it's quite obvious this is a rather large valley between the two of them.

• • •

[862] Q. Do you recall whether you communicated to Aspen Highlands that you intended to change the airport sign that we have seen?

A. I really don't remember. Probably not. I would really have to search my memory on that one.

• • •

Testimony of John Thorbeck

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

• • •

[871] Q. At the time that this study was done, do you recall whether or not the Aspen Skiing Corporation offered a three-day ticket?

A. Yes, they did.

Q. Now, the second paragraph of this page says, "Those Aspen skiers who perceive value in avoiding lift ticket lines would be willing to pay a premium for a ticket which provides that service. By creating the three-day pass, ASC cannibalizes customer purchases of the higher revenue six-day tickets."

Do you recall that particular statement?

A. Yes, I do.

Q. And do you recall the recommendation as a result of that that the Aspen Skiing Corporation eliminate the three-area ticket?

A. Yes, I do.

• • •

[873] Q. Could you identify for the jury what Blackcomb is?

A. Blackcomb is 70 miles northeast of Whistler Mountain—or northeast of Vancouver, next to Whistler Mountain, which is a resort that's been there for many, many years. It was just opened this past year, and the partner—the owners of that resort are a Federal Government agency in Canada, 50 percent, and Fortress Mountain resorts, which is one of our subsidiaries. So it's a joint venture with a Canadian Government agency.

Q. And it is true, is it not, that Aspen Skiing Corporation is a 50-percent owner essentially of the Blackcomb resort?

A. That's right—of the mountain operation.

* * *

[874] Q. Mr. Thorbeck, Whistler has a joint ticket arrangement, does it not, with Blackcomb—or Blackcomb has a joint ticket arrangement with Whistler—or am I getting it confused?

A. I believe they did this year.

Q. There are two mountains, are there not?

A. Yes.

Q. One is owned by the entity which you have an interest in and the other one is owned by a completely independent party. Is that correct?

A. That's correct.

Q. And there is an interchangeable ticket available on a six-day basis. Is that correct?

A. There is an interchangeable ticket available, but I don't know the details of it.

* * *

MR. MAYWHORT (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[888] Q. What, if any, effect would Aspen Skiing Corporation's refund policy have upon a skier's ability to ski at Aspen Highlands if he or she so chose?

A. Well, I think that it would probably encourage it. We are one of the very few areas that refunds unused portions of tickets; so if someone bought the six-day ticket and had realized that they wanted to ski Aspen Highlands, they are not really stuck with that six-day ticket. They could come in to [889] the ticket window and have the unused portion of the ticket refunded. I am not an expert in

ticket availability in the ski industry, but I know that there are very, very few resorts that kind [sic] of a service.

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MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[890] Q. The question again is on those [891] tickets which are sold through tour operators so that there is a commission involved, do you know whether or not that commission is subtracted first before a refund is given?

A. That commission is not. When that refund is given, to the best of my knowledge we absorb that commission.

* * *

[895] Q. But isn't it true that one of the things that the Aspen Skiing Corporation has been marketing, both before and after the limination [sic] of the four-area ticket, is the Town of Aspen? That's part of the skiing experience, isn't it?

A. It's part of the resort experience.

[896] Q. It's part of the Aspen resort skiing experience. Isn't that correct?

A. That's right.

Q. And the town existed before the Corporation, didn't it?

A. Yes, it did.

Q. Are you familiar with how the Aspen Skiing Corporation acquired its dominant position in the Aspen market, for example, in terms of the number of mountains?

A. Yes, I am.

Q. Do you know, for example, that in 1964, Buttermilk was acquired by the Corporation?

A. Yes.

Q. And you know in 1969, the permits at Snowmass were acquired and that area was developed by the Aspen Skiing Corporation?

A. Yes.

MR. MAYWHORT: Excuse me. I believe that was 1967 on the permits. You said 1969.

MR. TRAUTMAN: I'm sorry.

Q. (By Mr. Trautman) '67—is that your understanding that in 1967 the Aspen Skiing Corporation acquired those permits and developed Snowmass?

A. Yes.

* * *

Testimony of Dante Stephensen

MR. MAYWHORT (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[993] Q. You are aware, are you not, that you could buy the six-day, three-area package from Aspen Skiing Corporation, ski one day at one of the three mountains that are owned and operated by Aspen Skiing Corporation, and then take back that ticket and [994] obtain a refund.

A. A refund? Aspen Mountain has a ticket with a refund on it?

Q. I am asking you. Are you aware of that?

A. No, I'm not. If you ski three days on a three-day ticket, there is no more ticket.

Q. On a six-day ticket.

A. One a six-day ticket? No, I am not aware of that. If that is part of the program, then that has not been

conveyed by the public relations or marketing people to the ski clubs, because it always comes up and it came up last year because last year 89 of my members or so on the trip bought the Aspen Mountain package and one of the frustrations was—you know—"Why can't we ski Highlands?"

"Well, you can."

"How do we do it?"

"Well, you go out and buy a one-day pass."

"What about the six-day consecutive?"

"Well, you can't turn it in."

I have not been under the impression that you can turn it in.

* * *

Testimony of Betty Beaco

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1001] Q. Do you have any experiences as a lift operator with skiers regarding the existence of those two tickets?

A. Yes. There was some confusion on those tickets. We had some three-area tickets that people would come up with those that thought they were the four-area ticket, and we would have to explain that they were just the Ski Corporation ticket and were not good on our mountain.

Q. How frequently did you encourter that in the 1977-'78 season?

A. It was quite frequent.

Q. On a weekly basis, what would be your estimate?

A. Oh, I would say weekly around 10 people with the Aspen Skiing Corporation ticket.

Q. Now, in the 1978-'79 season, did any similar—1978-'79 being the year in which there wasn't a four-area ticket available—did any similar problems occur?

[1002] A. Yes. We had quite a few more people coming up with the Aspen Skiing Corporation ticket believing that they were the four-area tickets.

Q. Did they explain their belief to you in any fashion?

A. Yes. I would explain to them that that was not our ticket and it was not good on our mountain. They would say, "But we have a four-area ticket."

I said, "We don't have a four-area ticket this year."

They said that they were told it was a four-area ticket.

Q. And you mentioned that there were more people in that year than the year before. How many more would you estimate?

A. I would estimate probably around 20 people a week would come up.

Q. Was anything done on the part of Aspen Highlands to try to clarify the confusion?

A. We would tell the people about the tickets. Later on, they had printed up a little notice for the lift operators to hand to the people to verify that their tickets were not good on our mountain.

Q. Have any similar problems appeared in years after the '78-'79 season?

A. Well, every year we would have some people come up with Aspen Skiing Corporation tickets. They would be people [1003] that had skied when we had the four-area ticket, and they hadn't skied since then. They would come up and want to ski the mountain with the Aspen Skiing Corporation ticket.

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Testimony of Walter Tingley

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[1012] Q. You mentioned that Ski International was a tour wholesaler. Could you elaborate upon what the role a wholesaler plays in the overall ski tour industry is?

A. Yes. In the travel industry you have two echelons of suppliers, or two—The organization of marketing is such that you have a supplier level. That supplier can be defined as an airline providing an airline seat, a bus company like Continental Trailways, for example, providing a bus seat between an airport and a ski resort. A ski resort itself is to be broken down into subgroups of the lodging community and the uphill transportation company or the ski mountain. That supplier is the initial—those suppliers and examples of that are the initial suppliers of the raw product.

[1013] A wholesaler in the travel industry is a person who takes those raw products from the initial supplier and packages them as a marketing arm extension into its own package and offers it in the marketplace.

So if I may use an example, if you have a wholesale grocery store, the wholesale grocery store will represent any airline or any ski resort. A wholesale ski tour operator such as Ski International—excuse me—this is a wholesale grocery distributor, while the Safey [sic] Store is the retail point of purchase, whereby the person purchasing groceries buys their groceries off the rack.

Using the same analogy, the ski resort and the airline wholesaler are offering products through the travel agent market or travel agent community. There are 20,000-plus travel agencies in the United States, Canada, and Mexico, that sell wholesaler packages, not just skiing but to any destination in the world. They perform that function. So

Ski International is a company that gathers and manufactures a product using the raw product of the supplier—in this instance, of the ski resorts and the ground transportation companies—and offers it through the travel agent community to the general public vs. going directly to the public and retailing such as a retail travel agent would do.

Q. So that in your analogy, the travel agent would be equivalent to the grocery store?

[1014] A. Absolutely.

Q. Could you describe the ski packages that Ski International puts together and markets in this framework that you described?

A. If I can explain it by comparison again, it's a two-edged sword in our business. The supplier is our major competitor as well as our supplier; so we are basically marketing effectively against the ski resorts who have their packages—their own packages generally, a lodging a lift ticket package in the marketplace, let's say tied up in a blue ribbon, while Ski International takes that same lodging and lift ticket and adds to that ground transportation, most particularly in our package with a rental car about 90 percent of the time, and trip cancellation insurance as well as some other what we call give-aways or promotional items. Thereby we wrap our package in a yellow ribbon so that effectively we are offering a full-service package to the client purchasing from the travel agent that picks up on his arrival in the gateway airport vs. arrival in the ski resort, which is generally what the ski resorts offer and the lodging communities offer.

* * *

[1023] Q. Now, the package that you offer now to the skier that we have been talking about—what does it include in the way of ski lift tickets?

A. It currently includes the Aspen three-mountain lift ticket.

Q. The Aspen Skiing Corporation?

[1024] A. Aspen Skiing Corporation three-mountain lift ticket—three-area lift ticket. A lot of interchangeable terms are used for it.

Q. And that's a six-day ticket?

A. I offer a four-day package—a four-night package, but it is generally in Low Season, and Aspen is not an appropriate destination for four nights. It is too expensive and too difficult to get to, and generally speaking for the weekend skier, which is what the four-night package is aimed at, it does not apply.

Q. Are there other reasons why Aspen tends to be a week-long destination in your experience?

A. Aspen can support a week-long vacation as well as or better than any other resort. It was probably the first to point out to a lot of ski areas developed later that it could support a week's vacation.

Secondly, through the years it has developed that you can't get anything but a seven-night package during regular season because of the accommodations going from Saturday to Saturday time of arrival to departure schedule.

* * *

[1025] Q. You mentioned that your package includes the Aspen Skiing Corporation six-day, three-area lift ticket. Have you had any experience with any customers who as part of that package will drop one day of the dates that they are buying through that lift ticket and purchase daily lift tickets elsewhere?

A. Let me ask you this way: If you had $22 in cash—a 20 and two ones on a string around your neck—would you take it off and throw it away? The answer is no. That's effectively what happens. That's for next year's rates, as I understand it. They were 18 this past year.

* * *

Q. So you were putting together Aspen packages during the periods from 1973-'74 to 1977-'78?

A. Correct.

Q. What ticket did you include in that package at that time?

A. The four-mountain lift ticket.

[1026] Q. And do you recall in 1977-'78 that there was both a four-mountain ticket available and the Aspen Skiing Corporation three-area, six-day ticket available?

A. I do not recall that, but it is a moot point. I wouldn't have been interested in the three-area ticket for all the reasons I have said. Our philosophy is that we are giving—in order for us to offer Aspen and to offer it consciously as a premier ski resort, our clients should be offered all of the terrain. Therefore, we would never consciously consider offering a three-mountain ticket if there were a four-mountain ticket available.

* * *

[1028] Q. During the time that Ski International was marketing packages with a four-area ticket, did you ever have occasion to make recommendations to purchasers regarding the various mountains in Aspen or the various skiing experiences or support services available in Aspen?

A. Only with relation to the ski school at Highlands.

Q. What were those recommendations?

A. We had always done extremely well because through the development of my company we at one time exclusively handled some ski clubs on a contract basis and we had always done very well and had excellent success with the ski school at Aspen Highlands, the GLM, Graduated Length Method and the way they did it. Effectively when there was the confusion of the three- and four-area and not

having it available and the one-year transition in there and since that time, we are effectively precluded from recommending Highlands Ski School.

What we used to do was recommend at least the first day or two at Highlands on the ski school and then recommend that the people go ski the other mountains just so that they could see what they were like for their next trip. Aspen Highlands has not received any business from us through their ski school or on the mountain since the four-day lift ticket— [1029] excuse me—the four-mountain lift ticket was discontinued.

In my opinion, the four mountains, I feel, as Mr. Stephensen did—the four mountains in Aspen are strictly a subjective qualitative determination of what one is best. That's got to be determined by each individual skier based on what he likes to do. It is in the eye of the beholder, whether one is better than the other.

* * *

MR. MAYWHORT (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[1044] Q. What I am getting at is that you referred to Mr. Stephensen's testimony concerning an injury.

A. Yes. What I am saying to you is I know that you can get a refund for certain injuries. Okay? He happened to say that he thought it was tough luck. I have never had that problem. I could always do that given some injuries; but never have I been told, nor has the information been made available in all of the materials I receive every year from Aspen Skiing Corporation—okay?—that the ticket can be refunded; that it is optional and can be refunded for the daily amount—any unused days. In fact, to the contrary, it is my understanding that there were six-out-of-seven con-

secutive days or six-out-of-six, depending on the year and which way the wind was blowing and that that was absolute; so that's the premise that I have operated under.

Certainly I will answer your question in summary and [1045] say if I knew that, it would be a factor in considering my conscious decision to make a choice of lift tickets. It is not an acceptable solution to the four-mountain lift ticket, however, in my opinion.

• • •

Q. Now, you also had a few things to say about Aspen Highlands Ski School and that at a certain time in the past, at least, you had recommened [sic] the ski school in particular to your [1046] clientele.

A. Right.

Q. Do you recall that that was at a time when Mr. Lefty Brinkman ran the ski school?

A. No. I never knew any of the ski school operators.

Q. So that name doesn't ring a bell?

A. I know that's where my wife learned to ski, and I was very satisfied with it and saw what she did, and she couldn't walk and chew bubble gum at the same time before she did it. It impressed me.

As a result, I could see that the person—I am in the business of promoting skiing. I don't care where they go. That's the difference between a ski resort and me. If a person has a good skiing experience. I don't care where it is. I have no allegiance to any ski resort. I have an allegiance to the concept of providing access for as many people in the world who have the means to have a good ski experience—the financial means—to provide that as best I can, even if I don't get the business, because eventually it can only benefit me by the shear [sic] weight of numbers.

One of the factors in Aspen that gave rise to our interest in Aspen was the fact that I had excellent feedback from people who went to the Highlands, went through the Highlands GLM Ski School.

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Testimony of Russell Frasier

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

• • •

[1052] Q. Now, again focusing your attention on the '78-'79 season when you were offering both the Aspen Skiing Corporation three-area, six-day ticket and the Highlands Adventure Pack, did anybody—did any problem develop with respect to refunds on the Aspen Skiing Corporation three-area, six-day ticket?

A. We experienced some problems, yes.

[1053] Q. Could you describe those for the jury?

A. The problems we experienced were that the tickets that we sold to the customers through a package, the customer perhaps did not ski at all or did not ski a full six days, presented the ticket for a refund to the Aspen Skiing Corporation. Some of the customers apparently were told at that time that they may be able to receive a larger refund from us as Aspen Reservations because as I understood it, Aspen Skiing Corporation was deducting a service charge which was comparable to the commission that they paid us.

Q. And what would happen to those customers during the '78-'79 season?

A. Well, those customers would come back to the Aspen Reservations address after going to the Aspen Skiing Corporation and demand, perhaps, a larger refund.

Q. What was their state of mind, to the best of your recollection?

A. Well, I would say most of them that we had were probably not too happy about having to go to two separate locations. They also perhaps were not happy about receiving or being denied a larger refund by the Aspen Skiing Corporation than perhaps they were to receive from Aspen Reservations.

Q. Now, did you attempt to resolve that problem with the Aspen Skiing Corporation?

A. Yes, I did.

[1054] Q. Could you tell the jury what you tried to do?

A. Well, I attempted to try (1) not to discriminate and have the Ski Corporation discriminate between the ticket we sold a customer and perhaps a ticket that they sold a customer. If that was unacceptable to them, I was hopeful that we could work out some book accounting entry that they perhaps would go ahead and refund the customer directly; and if they needed to assess a service charge to do that directly to us.

Q. Were you able to work that arrangement out?

A. No, we were not.

* * *

Testimony of Arthur Bowles

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1072] Q. It's true, isn't it, that the popularity of the Ski the Summit and the sales of Ski the Summit lift ticket coupon booklets by Breckenridge has increased significantly during that period of time.

A. Yes. Since I have been there, it has, yes.

* * *

[1073] Q. Now, as I understand it, one of the primary functions of Ski the Summit is a market tool to attract destination skiers to Summit County. Is that fair to say?

A. It sure is, yes.

Q. And then it's true that once a skier is in Summit County, the competition for their business takes place almost exclusively between and among the four ski areas that are located in Summit County. Is that correct?

A. Yes, it does.

Q. And the way that the Ski the Summit itself operates is to provide the skier with a coupon book in exchange for the price that the skier pays. Correct?

A. Yes. That's right.

Q. And the coupons from that book are then exchangeable at any of the ski areas for a daily lift ticket?

[1074] A. Yes.

* * *

Testimony of Jerry D. Jones

MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1100] Q. Certainly. The question is if you were to take all of the skiers that come to Summit County in a typical year, what portion of those skiers go to Breckenridge, what portion to Keystone, what portion to Copper Mountain?

A. Again, last year is not a very good year to make that judgment. The '79-'80 year is not good, and I can't quote specifically; but I can give you round figures. I think that Breckenridge had 712,000 skier days; Keystone had 645,000 skier days; Arapahoe Basin had 214,000 skier days, and

Copper Mountain had 638—no, 612—612,000 skier days at Copper Mountain. I am not sure about Breckenridge—714,000. I'm not sure.

* * *

[1104] Q. And have the purchase of Ski the Summit books increased—coupon books have increased over that period of time?

A. Yes.

Q. Does Keystone offers its own one-area, six-day ticket that's good only at Keystone?

A. Yes. We do offer that; but that is an option on your package. We offer the Ski the Summit ticket as our primary package.

Q. Has that Keystone-only, six-day ticket met with any particular marketing success?

A. Not since the awareness of the Ski the Summit program has grown. Our individual ticket sales have decreased every year.

Q. Has there ever been consideration given to allocating revenues from Ski the Summit program—coupon book sales revenues on the basis of some fixed percentage share?

A. No.

Q. On the basis of historical market share?

A. No.

Q. Such a concept has never been proposed by Breckenridge?

A. Not that I know of. I don't believe there is any need for that, because we do have an accurate accounting of our [1105] ticket sales the way it is now.

Q. Would you agree to that kind of system if it were proposed?

A. No.

Q. Why not?

A. I think that each individual area markets individually as well as cooperatively with Ski the Summit; and if there is any—at any one time an individual area could increase their sales significantly; so it would not be equitable at that time.

* * *

Testimony of Ted Farwell (Out of the presence of the jury)

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[1154] Q. Mr. Farwell, you also testified in your deposition that a critical assumption of support in your Method A is that all four ski areas have equal quality in the eye of the consuming public.

A. As a group, yes, they are of equal quality. Just because Snowmass is the best in the world doesn't mean that Highlands isn't like next door.

* * *

(In the presence of the jury)

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1176] A. We looked at originally—looked at the visits from 1966-'67 through 1979-'80, as reported to the U.S. Forest Service and Colorado Ski Country U.S.A.

Q. Did you subsquently look at '80-'81?

A. Yes. Later.

Q. Now—

A. This was in January.

Q. Why did you not use information prior to '73-'74?

A. Well, there were several reasons for discarding the earlier information. One reason is that the Aspen Highlands skier visit count that was presented to the Forest Service and Colorado Ski Country was inconsistent with their ticket audits. After looking over their ticket audit information, which occurred from 1973 forward, we adjusted each one of the years during that period. Therefore we felt that the data earlier, where there were no ticket audits, was unrealiable data.

The second reason for not using data prior to '73 was that the marketing practice—the four-area interchangeable ticket was not in effect prior to '73.

The third reason was that there had been a lot of changes in the capacity of the Aspen ski areas in the period prior to '73. Some new lifts were added at all of the ski areas, most especially at Snowmass and at Highlands; but every area had some new lifts.

[1177] Q. What difference did that make in the statistics prior to '73-'74?

A. Well, while it would not have an effect on skier visits per se, it would have an effect on the market share. You would expect market share to change somewhat is [sic] the capacity share is changing.

* * *

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

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* * *

[1219] Q. Right; and you've indicated that one of the assumptions that's important to you on this is the assumption of equality among the areas.

A. Yes.

Q. By that do you mean that the areas are equally desirable in the mind of the consumer?

A. I guess that's true.

* * *

[1303] Q. And the marketing of oh, for example, the multi-day tickets that you have talked about—six-day tickets—is typically directed at the destination skier, isn't it?

A. Absolutely.

* * *

[1340] Q. Now, Mr. Farwell, isn't it true that Aspen Skiing Corporation is widely regarded in the skiing industry as one of the best managed and most well-run ski areas in the country?

A. I'd say that's correct.

* * *

[1344] Q. Now, turning to Snowmass, Mr. Farwell, isn't it true that you regard Snowmass as the premier ski resort in the world?

A. Yes.

Q. In your opinion, in the mind of the typical vacation skier, is Aspen Highlands comparable to Snowmass?

A. The balance at Aspen Highlands and the balance at Snowmass are both comparable.

* * *

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1358] Q. Now, why have you utilized skier visits which have daily tickets, three-day tickets, and all of those other tickets in them for purposes of this analysis?

A. Well, the loss that we are showing is not only a loss in the four-day ticket but it is really a change in the whole ticket structure to the Highlands ski area over the period. For instance, if we are saying that Highlands lost—and again we will use an example—that Highlands lost 14,000 skier visits in 1977-'78, they actually lost a lot more than that from the four-area ticket, but there would have been other tickets that weren't purchased so that the mix would have been a lot different mix than they actually achieved for that year.

Q. Does the lack of the four-area ticket impact in your view on the sales of daily tickets at Aspen Highlands?

A. Well, yes, it is different. In some cases I am sure that a daily ticket buyer would have bought a four-area and in other cases I think it was testified earlier that when you come in groups that some people might be buying single tickets at Highlands if the multi-area ticket user that was in that group decided he could go to Highlands that day—or at least that was a possibility.

* * *

Testimony of George H. Lloyd

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1399] Q. Okay; and in subsequent years, '79-'80 and '80-81, what conclusions do you draw generally with respect to your total operating expenses?

A. In general, I think the numbers that are reflected there reflect our response to that dropoff in skier volume.

* * *

[1401] Q. What about advertising? First of all, what does that include?

[1402] A. Advertising includes publications in national magazines, in local advertising, radios, and so forth, as indicated previously by Bill Comstock and Peter McMahon.

Q. I notice that here you went from 126,000 to about 140,000 in '78-'79 and then dropped off to about 84,000 and then 85,000. What is the explanation for that?

A. '78-'79, we did substantial amounts of advertising—of marketing for the Adventure Pack on a national level—Ski Magazine, Powder Magazine, Skiing. In the following years with the budget restraints, we did not go into as much national advertising.

Q. Why is that?

A. Well, in looking at the results of the national advertising we did, I think as Bill Comstock stated the areas that we advertised on those national magazines was—we advertised Aspen—the resort of Aspen—all four areas of Aspen. We advertise the Adventure Pack, our concept of the four-area ticket, and we advertised ARI, the Central Reservations system. The number that we used in all those ads was 925-4000.

In looking at the result of those ads, the sales of our Adventure Pack through Aspen Reservations was only about $33,000 in gross sales.

Q. And how much did this national advertising campaign for Aspen, the Adventure Pack, and ARI cost approximately?

A. In the neighborhood of $75,000.

* * *

[1422] Q. Now, Mr. Lloyd, what effect does the individual daily lift ticket price of the Aspen Skiing Corporation have upon the economic feasibility of the Adventure Pack?

A. Well, when you have to pay your competitor the full daily rate, it's very hard to price that package, especially when you compare it to the other option, the three-area ticket. You have to still be competitive with the Aspen Skiing Corporation three-area ticket.

* * *

[1424] Q. Now, has the management of Aspen Highlands made a decision as to whether or not the Adventure Pack will be offered for the '81-'82 season?

A. No final decision has been made at this point in time.

Q. Now, does the daily lift ticket price announced by the Aspen Skiing Corporation of $22 have any impact upon that decision?

A. Very definite impact.

Q. Could you explain that, please.

A. Well, it just is not reasonable in my mind to receive $10.30 during High Season and pay for skiing at the other areas of $22. In Low Season, it even becomes less feasible to receive $3.50 and to pay your competitor $22 for his lift tickets.

[1425] Q. Do you have an opinion, Mr. Lloyd, as to what these economics look like in your view for next year?

A. In my view, yes.

Q. What is that?

A. I would say that the Adventure Pack is a thing of the past. It will not continue.

Q. If there is no Adventure Pack next year and no four-area ticket, do you have an opinion as the continued financial viability of the Aspen Highlands Skiing Corporation?

A. Yes, I do.

Q. What is that opinion?

A. Well, I think without the Adventure Pack, without a four-area ticket, basically Aspen Highlands becomes a day ski area in a destination resort.

* * *

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[1436] Q. What percentage do you suppose of your Adventure Packs were sold to tour operators?

A. Approximately 50 percent.

* * *

[1449] DEFENDANTS' MOTION FOR A DIRECTED VERDICT

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[1453] Secondly, Judge, we believe that there is no evidence of monopoly power in this case. There is no evidence that the Aspen Skiing Corporation has the power, in our view, to control price or to exclude competition as those terms are defined by the cases. The pricing decisions by the Aspen Skiing Corporation are first of all subject to scrutiny by the Forest Service; but secondly—and I think most importantly—they are subject to the competitive pressures of Vail, Utah, Steamboat, and that's why the destination ski resort market is the relevant market.

Now, on the power to exclude competition, the evidence so far is that ski areas both in Colorado and elsewhere are expanding. Nothing that the Aspen Skiing Corporation can do can prevent that; and in fact, there is anticipated on the near horizon a very major expansion in Aspen itself, the Little Annie ski area.

Under the cases of *Telex* and *Berkey Photo* and the many [1454] other cases that we cite in our brief, a company like Aspen Skiing Corporation is required to compete. It is required to make independent decisions. It is required to price its own product. It is required to make its own determination of the ticket that it chooses to offer and the tickets that it chooses not to offer.

* * *

Testimony of David R.C. Brown

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[1467] Q. Now, were you involved with the Aspen Skiing Corporation at the time that it was formed?

A. I was. I was one of the original investors in the company and a director from its start.

Q. Where did the company first build any ski lifts on Aspen Mountain?

A. The first two lift [sic] on Aspen Mountain opened for business on the last day of December, 1946, I believe it was.

Q. It was two lifts, you say?

A. There were two single chair lifts with a combined [1468] capacity of about 400 people an hour.

Q. Had you added some trails to the mountain?

A. At that time?

Q. Yes.

A. Yes. There was one trail cut prior to the opening—one additional trail other than Roach Run, which was the original trail there.

Q. Could you just briefly describe first the next five or ten year history of the company?

A. Well, for the next, I would say, nearly 10 years, we saw a gradual but steady increase in the number of people coming to Aspen to ski; and our biggest problem was trying to build facilities to keep up with the demand that had been created. We started with a very small capitalization, and we had to continue to borrow money and put back everything that we made from the operation into improving and expanding our facilities to accommodate the number of new people that were coming to town. There were a great many new lodges and restaurants and this sort of thing opened up during that period which catered to the public, and we were hard-put for many years to avoid having long lift lines.

* * *

[1469] Q. Did the company add lifts during that first 10-year period?

A. They did.

Q. Do you recall generally what kind of additions to lifts there were during that time?

A. Well, the first lifts that they added was a T-bar on what is now called the Little Nelle slope. They then built a lift we called No. 3, which served the upper part of the mountain and the easier part. Then following that, the T-bar was taken out and a chair lift, which was called No. 4

Lift—placed on Little Nelle; and then still I think within that first 10-year period No. 5 Lift was built, which connected with the upper part of the No. 4 Lift and went on up to higher slopes on the mountain.

Q. So as of about 1956, approximately how many lifts were you operating on Aspen Mountain?

A. Five lifts, I believe.

• • •

[1476] Q. Did the Aspen Skiing Corporation then pursuant to this agreement with Janss—Mr. Janss—develop lifts at Snowmass?

A. They did. We opened with five lifts, and we have continued to build lifts there as the demand and economic conditions warranted it.

Q. How were those lifts paid for?

A. Mostly out of cash flow and borrowed money.

• • •

[1478] Q. Now, turning from the question of Snowmass, Mr. Brown, we have heard some testimony in this case about the buses in Aspen and that Aspen Highlands has a fleet of buses of their own. Does the City of Aspen provide bus service for skiers?

A. They do, but it is paid for by the Aspen Skiing Corporation under a contract arrangement with them.

Q. Do you have a feel for the kind of support that the Skiing Corporation gives to the bus system?

A. Well, it's a good many hundred thousand dollars a year that we pay them to run these buses; but we find that it's more desirable than doing it ourselves, and it also gives the city buses for other uses in the off season.

Q. Does the Aspen Skiing Corporation participate in other ways in supporting the community?

[1479] A. Yes. We have participated a great many ways over the years. We subsidized—I don't know if that is the correct word—but made substantial payments to the airport authority in its early stages to get the airport expanded and improved. We gave, I think it was—I don't know the exact sum, but it was a large sum for the construction of a new hospital. We have provided a free ski school to the local children over the years along with children from neighboring communities, and we also give tickets—ski lift tickets to a group of local people who have done outstanding community services—and we do not kick [sic] these people. There is a Board that we have nothing to do with that designates who they feel should receive the tickets each year, and it's people like the Gray Ladies that work in the hospital and the women that run the thrift shop and some of the nurses—anybody who offers their service to the community.

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MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

• • •

[1505] Q. And the Aspen Skiing Corporation did not orginally develop the Buttermilk Skiing Corporation, but it was acquired. Is that correct?

A. We acquired it and then added substantially to it.

Q. Okay. Now, you mentioned some—I believe with respect to Snowmass that the Janss Company had acquired the private land at the base of Baldy Mountain in the early 60's, with a view toward developing a ski area. It that generally correct?

A. Yes, it is correct.

Q. And did they also at that time acquire certain Forest Service permits which would familitate [sic] the skiing on that mountain?

A. They acquired, I guess, a temporary permit subject to validation when the area went into operation.

Q. Well, isn't it true that some of the touring that you were talking about previously was also performed under a permit held by Mr. Janss?

[1506] A. Yes.

Q. And that permit was not held by the Aspen Skiing Corporation.

A. Not at the time.

Q. And is it also true that Mr. Janss later acquired a conditional permit to open a ski area at Snowmass?

A. I think that what we were operating under during the tour period was his conditional permit.

Q. Okay. After the tour period, didn't he later on obtain another permit?

A. Yes. He obtained a regular Forest Service permit for a ski operation.

Q. Again, that was not obtained by the Aspen Skiing Corporation?

A. It was obtained by the Janss Corporation and assigned to us.

Q. And it was assigned to the Aspen Skiing Corporation to facilitate your construction of lifts, etc.; is that correct?

A. That's correct.

Q. Now, you mentioned just recently in your direct testimony that one of the reasons you wanted to go your own way was with respect to this three-area, six-day ticket—was that you felt that it was a very desirable ticket. Is that correct?

A. I felt that a package is a very desirable thing for a [1507] tour agent to sell.

Q. And isn't it true that what put the Aspen Skiing Corporation in the position to offer three mountains was the fact that you had acquired Buttermilk and that you had acquired the permit at Snowmass?

A. Certainly. If we didn't have three mountains, we couldn't offer a three-area ticket.

Q. Now, you mentioned some buses—I think that you said that the Aspen Skiing Corporation paid for that ran out to Snowmass. Is that right?

A. Both Snowmass and Buttermilk.

Q. When did the service to Buttermilk begin?

A. I don't remember exactly, but shortly after we acquired the Buttermilk ski area.

* * *

Testimony of Arthur Pfister

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

* * *

[1525] Q. Could you describe for us, Mr. Pfister, and for the jury the history of your involvement in the Buttermilk ski operation?

A. In early 1958, Friedl Pfeiffer and I decided on our adjacent ranches, which we had owned previous to this endeavor, to build a ski area.

In those days—it was a year before D.R.C. was President of the Skiing Corporation—and I was a director at [1526] the time. They didn't have the money. They didn't want to expand, but Friedl owned the Aspen Ski School, and he had no place to teach beginners and intermediates; and so we decided that the ideal place would be to build

Buttermilk. As a director of the Skiing Corporation, I strongly urged the Aspen Skiing Corporation to do this. However, our President at the time wasn't very enthusiastic about skiing, and we weren't making any money. So Friedl and I went ahead with the project. We each owned 40 percent of it. Billie Ruby had 15 percent, and Fred Islan had 5.

* * *

Q. How long did you and Mr. Pfeiffer operate Buttermilk?

A. The dates—I might be off one year, but I think we operated as a partnership. We operated for three years, and on the fourth year, we decided to build a—we finally got a Forest [1527] Service permit to go all the way up to the top. We were going to put in a double chair on the upper section, and Friedl and I had some rather violent arguments about where the lift should go and what kind we should buy. So it came down to the point where we had a buy-and-sell agreement.

I said, "Friedl, I want to buy you out"; so that afternoon he came with a check.

He says, "I want to buy you out." His check was 15 percent more than mine was. I didn't know until after I received the check that it was from Robert O. Anderson; so Mr. Anderson wasn't in on the deal the first three years, but he managed to survive with Friedl one year and then they all sold out to the Skiing Corporation. So I wasn't in on the stock deal. I took cash, but Robert O. Anderson and Friedl both took stock in the Ski Corporation.

* * *

[1528] Q. Could you describe for us just briefly the history of the Buttermilk operation, beginning in 1960, let's say.

A. Well, we struggled along, and they put in that double chair on the top section the year after I left them.

Then as soon as the Aspen Skiing Corporation bought it, they took the T-bar off the base—the large T-bar and built a double chair in [1529] place of it and took the T-bar and moved it over to the Tiehack side for expert skiing. Gradually they opened up No. 3 Lift on the west and put a base area in there.

Then in 1970, they extended farther down into my ranch and put their Eagle Hill—their small area that connects with the Tiehack Lift.

I must say at this point that I don't—I don't see how I could ever complain about the Ski Corporation percentage to me, because at that point they took over a small percentage of my land without my going to litigation or anything of the sort. In fact, without my knowing it had happened; but they almost doubled my percentage, so I have never really been too unhappy with the Ski Corporation.

* * *

[1533] Q. Do you recall discussions among the directors of the Aspen Skiing Corporation concerning the utilization of the survey to divide revenue on this four-area ticket?

A. Yes. I was always under the impression that the—the least I can say is that they were accurate and I didn't depend on them at all. I have never really been in favor of the four-area ticket.

I am a businessman, and I have never understood why a businessman should help his competitor. I don't want to kill him, but I don't want to help him.

* * *

[1535] Q. Are you familiar that Mr. Comstock has testified in this case concerning this conversation he says he had with you?

A. I remember riding in with Bill, and I probably—I have heard what he said, and I probably did say that

because I figured that Whip would not take a deal unless he had the best end of it.

* * *

[1536] Q. You referred to the question of quality at Aspen Highlands. Does that have any relationship, and if so, what relationship?

A. Well, if Highlands' percentage was going down, there must have been a reason. Our product was going—was improving, because we were adding more money and spending more putting in all these new facilities. That's the only answer to that. We just had better skiing.

* * *

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[1546] Q. Okay. Now, is it true that prior to the acquisition of Buttermilk by the Aspen Skiing Corporation that the Aspen Skiing Corporation did not have a good mountain to teach beginning skiers on?

A. The top of Aspen Mountain was very satisfactory; but this isn't a very popular thing with customers to be hauled up a lift to teach; and Little Nelle is a little too steep to teach beginners. That was one of the reasons we had a joint ticket and why Mr. Pfeiffer was able to take part of the ski school out there.

Q. So the purpose of that joint ticket was to take people who ordinarily would ski at Aspen Skiing Corporation but wanted to learn to ski over to Buttermilk, which had a better facility for teaching people to ski; is that correct?

A. True.

* * *

[1552] Q. But in any event, you think that the three mountains of the Aspen Skiing Corporation are superior to Aspen Highlands; is that correct?

A. Yes.

Q. Now, is it true that you have a daughter named Nancy?

A. Yes.

Q. Is it true that she has had a season pass at the Aspen Highlands for the last three years?

[1553] A. She and Mr. Jones are very good friends.

Q. Is it also true that you, in August of 1980, were shooting trap with Mr. Jones and requested that he give you a season pass at the Aspen Highlands?

A. I might have conned him out of one.

* * *

[1554] Q. From your point of view, what did you think was declining?

A. Their skier days.

Q. Over what period of time, sir?

A. I think it was about a four-year period.

Q. What years were you looking at?

A. I think from about '76 on.

Q. '76?

A. '77, and after that, '78, '79, '80.

Q. Do you recall when the elimination of the four-area ticket took place?

A. Yes.

Q. When was that?

A. '78.

Q. Okay. So the decline that you were looking at had to be prior to '78, didn't it?

A. Yes. That's right. It must have been '73 or '74. I'm not sure. I'm not certain about it, but I do remember that when we discussed the numbers at a directors meeting that it was my opinion that their share was declining.

Now, also we speak of quality. We have increased our lift capacity since the four-area ticket went in 70 percent at Snowmass.

• • •

Testimony of Thomas Richardson (Recalled)

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

• • •

[1570] Q. Now, if we—You were here during the testimony of Mr. [1571] Farwell, Mr. Richardson.

A. Yes.

Q. And he indicated that Aspen Mountain had reported a capacity of about 3,000 skiers.

A. Yes.

Q. What does that work out to in terms of skiers per acres?

A. Approximately 600 acres; so that's approximately—exactly five people per acre to have a capacity of 3,000 per day.

Q. And you recall that his testimony was that he had calculated or his projections were based on a density for Aspen Highlands of 11.4 skiers per acre.

A. Yes. It's over twice what Aspen Mountain has.

Q. Now, the green ridge and slope on the right side of that picture—what is that?

A. In this picture?

Q. Yes.

A. You mean this ridge here?

Q. Yes. What is on the right-hand side of that ridge?

A. Aspen Highlands would be over here, but this is Castle Creek going through here.

Q. And what is the wooded area there? That is not part of the ski area, is it?

A. No. The wooded area here is not part of the ski area.

Q. Mr. Richardson, there has been testimony in this case [1572] about the Little Annie development that is underway in Aspen. Where is that project going to be located? Just describe it to the jury and point it out on that map.

A. Okay. The base terminal for the Little Annie—or access to the Little Annie ski area will commence approximately in here, and it will be a gondola, which is a closed cabin, cable lift. I may not have it exactly, but it will start here and go into this area in here. Then I believe there is a dog leg there to the top. This is the skiing area in here.

Q. That's the kind of wide-open-looking area at the upper left of the picture?

A. It's wide open, modern commercial type of area. It is differentiated from this, which is expert terrain; and it is a different kind of mountain; but it is part of the same mountain but it is intermediate terrain. The first phase would develop I don't know how many acres, but they estimate that the carrying capacity or capacity of this area in here is about 4,500. They also plan to expand down the other side.

Q. 4,500 skiers?

A. 4,500 skiers, yes.

Q. Now, Little Annie—when you say it is a modern commercial mountain—could you tell the jury what you mean by that?

A. When you cater to the destination skier, you really don't need expert terrain anymore. 20 years ago, 10 years ago, you needed expert terrain; but most of the mountains that have [1573] come onstream recently cater pretty much to the intermediate skier. The destination skier does not ski a lot. He is not in shape, and they do not enjoy steeper terrain. That is basically a fact, and this is one reason why Snowmass and Buttermilk are so successful—and particularly Snowmass relative to the other two.

Q. Now, on Little Annie, what is the status of Little Annie at the moment?

A. The status of Little Annie, unless some administrative problem comes up, should have an operation '73-'74—I mean '83-'84, and the cost, I understand, is anywhere from 30- to $40-million to develop that ski area.

Q. Has anyone at Little Annie approached you and requested that a joint ski ticket be used?

A. No. We have talked about evacuation agreements, but nothing about tickets.

Q. Have you entered into or negotiated evacuation agreements with Little Annie?

A. About two or three weeks ago, we signed an evacuation agreement.

Q. What is that?

A. The access to Little Annie is by aerial lift; and in case that lift would break down, the people skiing up here would have no way of getting down off the mountain

without skiing down Aspen Mountain. You can't ski down here. It's too steep and [1574] undeveloped; so we, under certain circumstances and conditions—we allow them to evacuate down the front side of Aspen Mountain or off this ridge and on down through Little Nelle.

Q. Now, on the map it looks like the Little Annie project is pretty close to the Aspen Mountain slopes. Is that true? Is it readily accessible as between those two areas?

A. Mr. Pfister was talking about fall-line skiing.

Q. Fall-line skiing?

A. Fall-line skiing. He would have to ski out of the fall-line. You could catwalk between the two areas, but to ski down the fall-line you couldn't do that and ski to Aspen Mountain from Little Annie; but you could catwalk it.

Q. Is it anticipated, then, that the Little Annie skiers will ski the Little Annie and Aspen Mountain skiers will ski the Aspen Mountain?

A. We hope so, unless there is an evacuation. Then they would be evacuated from Aspen Mountain.

Q. Now, aside from the emergency procedure that you have worked out with the Little Annie developers, is there any other relationship between the Little Annie development and the Aspen Skiing Corporation?

A. None.

Q. That's an independent project?

A. Yes. It is an independent project. I have skied back here, and some of the employees have skied there; but we have no [1575] relationship with them.

• • •

[1579] Q. You have referred to fall-line skiing. Is Butter-

milk a good description, a good example, of fall-line skiing?

A. In my opinion, Buttermilk is a good example of a modern mountain, although it doesn't have the size of Snowmass. It is a very modern mountain as far as relating to the commercial skier. It has wide-open slopes, easily groomed trails; but at the same time, it offers a challenge to intermediate. There are short areas or steep short areas and bumps, more or less—large bumps that create anticipation for intermediate skiers, [1580] and they will feel challenged. At the same time, they can handle it very easily, and it really builds their ego and it is a ego mountain, because it is the type of skiing, I feel, that is the future in the ski business. We are in the market—the destination market that we try to service, which requires that kind of skiing.

Now, we also, during the last seven years—we have installed a major snow-making system at Buttermilk, it cost us about $20,000 an acre over 74 acres. We cover this entire area down here.

Q. What additions, if any, have there been at Buttermilk since 1973, the period when Mr. Farwell began to do his projections?

A. Well, we haven't increased the capacity of the area but we have spent a great deal of money, as I said, in snow-making.

We've also made some major lift changes in particularly this lift here. We altered the loading terminal and did some quality-type work in that lift.

There was a restaurant installed over in here during that period with about 200 seats—175 seats approximately.

Q. Have you added some trail acreage at Buttermilk and if so, can you describe that?

A. Yes. The trail acreage at Buttermilk hasn't been much over that. It's been about 7 percent, and it's been this

trail here, this trail here, and I think a trail over here, in [1581] here, called Red Rover.

* * *

[1583] Q. When you say, "operate the mountain," what do you mean?

A. The mountain presently—that is an old picture. It was taken in 1978; but presently Snowmass has 12 lifts. In the summer of 1973 it had eight lifts.

[1584] Q. You mean that four lifts have been added since 1973?

A. Yes.

Q. could you describe those in detail and show the jury where they appear on that map?

A. In 1973, we built two lifts. We built a triple chair lift that was referred to previously. Let me get oriented here. The triple chair lift starts at the base here and goes to about this location.

Q. Would that then be an access lift?

A. Yes, it is an access lift; but it does have some skiing but not a lot. It is mainly an access lift.

Q. Let me interrupt you a moment, Mr. Richardson. What is a triple chair lift?

A. A triple chair lift—it is a chair lift. I think you all know what a chair lift is; but it seats three people instead of two, and it has a higher capacity. This particular lift can handle 1,800 people an hour.

Q. How do three people get on a lift at the same time?

A. Just sit down on it.

Q. They stand in a row of three instead of a row of two?

A. Yes.

Q. Does it have lines of three people instead of lines of two people?

A. Well, there are a number of ways you can do it. You could have lines of three people going in or you can have lines [1585] of two people and then singles. There are a number of ways of doing that.

Q. You were going to describe the other additions to the capacity of Snowmass since the base year of Mr. Farwell's study.

A. No. 8 Lift, which is what we call the High Alpine Lift, was in the same summer and goes to about in here.

Also we started a restaurant in here that eventually built that last summer, and that has a capacity of 700 seats in it.

Then in 1975—the summer of 1975, I believe, we built another lift, which incidentally, I think, is the longest double chair lift in the U.S. It's over 8,000 feet long. It services this area in here, which already had a lift.

Q. The top sort of open area?

A. Yeah. This big open area in here. That has about 1,200 an hour capacity also. Maybe that is a little less than 1,200 an hour, but it goes way up into here.

Q. When you say it has 1,200 per hour capacity, what do you mean by that?

A. That means if the lift doesn't stop and is continually going, the lift will transport 1,200 people from top to bottom in one hour.

Q. This is more skiers than that area can handle, then.

A. Right; and then the last lift that was built—I think it was '78—is No. 12 Lift. That is in here, and that goes to [1586] 11,800 feet and services all this terrain in here.

The vertical transport feet during this period from '73 to 1980—I am talking about summaries—was increased 70

percent during that period, and the VTF is an industry way of measuring the capacity of the lift—the lift capacity of a mountain. It means vertical transport feet—is what it stands for—per hour.

Q. Basically what you are saying is that Snowmass added 70 percent to its lift capacity during that period?

A. That's what the industry standard would use—70 percent. Its lift capacity has been increased 70 percent during that period.

We also increased the trails—the groomed skiable trails by about 23 percent.

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Q. Now, what about the mix of slopes at Snowmass? Can you describe that?

A. Snowmass is a huge intermediate area. it does have some advanced skiing and there are some, I suppose we would call, expert terrain; but it really doesn't have a lot of it. [1587] But the thing about Snowmass that I think makes it so attractive to the tourist is that it's wide open and alpine.

Q. What do you mean by alpine?

A. You are above treeline, and it's a lot of areas in the western part of the United States and also in New England where when they get to the top of the mountain they are very restricted. You maybe have just a narrow trail coming down to service some of the skiable terrain.

But this area is really skiable from top to bottom. It has very few catwalks. It is all fall-line skiing, and I think the ultimate test of any ski area is not what I like or what a particular mountain manager likes. It is what the public likes; and that's what we try to build—is a ski area that the public likes. They tell us what they like; and if they don't like something, we know next time we will try not to do it.

But for example, the people that ski Snowmass—I would say over 95 percent of the people that ski Snowmass are destination skiers. To just show you how they prefer Snowmass or how they like Snowmass, about 83 percent of these people—of the total skiers that ski Snowmass—they ski Snowmass exclusively. They don't ski anywhere else; and I think that just shows it is a popular mountain. It has the largest skier visit numbers of any ski area in Colorado. I think last year—not this year, because of the drought was here along with everybody else—but it was the third most popular ski area in Colorado as far as [1588] skier visits were concerned.

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MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[1591] Q. Now, you mentioned that 83 percent of the skiers that ski Snowmass ski there exclusively. Is that correct?

A. That's according to a survey we made.

* * *

Testimony of Kay Taylor

MR. MAYWHORT (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

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[1633] Q. Now, we have heard a lot about one-day tickets and three-day tickets and six-day tickets during the course of the trial. Could you just give me a thumbnail sketch of the various types of tickets that the Aspen Skiing Corporation has sold during the course of its existence?

A. We've always had a one-day ticket that sort of is your basic adult one-day ticket. Then we have had a three-day ticket and a six-day ticket. On occasion we have had a four- and a five-day ticket.

As time progresses, we are always looking for new methods to make the ticket system work better, to make it more convenient for the public; so we are always experimenting with something new.

Q. What exactly is the rationale behind offering any sort of a multi-day ticket when you already have a daily ticket?

A. It's convenience for the customer. If you've come with your family, it makes it a lot easier Daddy [sic] can go to the ticket window and get everybody's ticket at once and get it all paid for. Everybody gets their ticket and off they go. It also [1634] means you don't have to come back every day to the ticket office.

In recent years, it's been the around-the-neck ticket, which if you will look on page 4—those are the tickets that have the elastic string through them, and you just wear them around your neck. We can frequently offer those at a little bit of a discount. Tour operators, travel agents, etc., purchase this kind of ticket in general on package plans so that these tickets are also bought sometimes—or offered on a commission basis.

Q. For how long has the Aspen Skiing Corporation had a multi-day ticket such as you just described, side by side with a daily ticket?

A. Well, we have actually always had a multi-day ticket side by side with our daily tickets since 1948; but as far as it being precisely in this form, that is a more recent development.

Q. Now, going back into the history of the company's ticketing, what was the first year that the Aspen High-

lands and the Aspen Skiing Corporation entered into a joint ticketing arrangement?

A. I think it was in 1962-'63 season.

Q. And how long did that ticketing arrangement last?

A. Through 1971-'72.

* * *

[1645] Q. Ms. Taylor, could you run through very quickly year by year during the period of the 60's and tell me the different types of Aspen Skiing Corporation multi-day tickets that were offered side by side with either the coupons or the around-the-neck joint ticket in '71-'72?

A. '62-'63, we had a three-day and a seven-day. '63-'64, we had a three-day.

Q. Slow down a little bit.

A. And a seven-day. '64-'65, we had a three-day and a seven-day. '65-'66, we had a three-day and a six-day. '66-'67, we had a three-day and a six-day. '67-'68, we had a two-week ticket—two one-week tickets with a High and Low Season price. '68-'69, we had the same thing. There was no three-day ticket offered in either of those two years, nor was there a three-day offered in '69-'70; but there was a vacation special, which was six-day ticket, more like a learn-to-ski week. '71-'72—'70-'71, the only thing offered was the joint ticket. '71-'72, which was the around-the-neck ticket, we had a three-day.

Q. Okay. During this period that there were Aspen Skiing Corporation multi-day tickets on the one hand and a joint ticketing [1646] arrangement of one form or another on the other, how did the sales of Aspen Skiing Corporation multi-day tickets compare with those of the joint ticket?

A. Very well. I think probably about 5 out of those 9 years we sold more of our own than the joint. I think one year it was just about even, and then there were a couple of

years—maybe three years, particularly as you are getting toward the 70's, that the joint ticket was sold more.

Q. Now, you indicated the joint ticket was abandoned after the '71-'72 season. Is that right?

A. Yes.

Q. Was the Aspen Skiing Corporation sued by the Aspen Highlands at that time?

A. I don't believe so, no.

* * *

[1652] Q. So during the 1972-'73 season, what types of multi-day tickets were offered by the Aspen Skiing Corporation?

A. We offered a six-day and a three-day.

Q. Now, what occurred with respect to the ticketing system beginning in 1973-'74?

A. They went back to a four-area ticket.

* * *

[1658] Q. Now during the years of the survey, Mrs. Taylor, what, if any, multi-day tickets were issued by the Aspen Skiing Corporation along with the joint four-area ticket?

A. I will have to refresh my memory.

We had a four-day ticket—a three-day ticket in '73-'74; a four-day ticket that we experimented with in '74-'75, and then again a three-day ticket in '75-'76; a three-day ticket [1659] in '76-'77; and '77-'78, we had both a three-day and a six-day.

* * *

[1661] Q. And I'd like to turn now to refund policies of the Aspen Skiing Corporation. Are you familiar with that overall policy?

A. Yes, I am.

Q. Would you please describe for the jury the current refund policy of the Aspen Skiing Corporation on multi-day tickets?

A. On multi-day tickets? Basically the whole philosophy on it is if you buy a multi-day ticket, if it is offered, it is a convenience ticket and you pay full price for it, which is what our three-day tickets are. Our three-day tickets cost as much as three one-day tickets, $54. If you don't use your three-day ticket for whatever reason, you just walk back into the adjustment office or you mail it to us, and we will refund your money. We can tell whether you have used it or not, of course, because of the punch system.

On the six-day ticket—now those tickets are generally [1662] offered at a slight discount; so what we do is simply refund less the daily price, so that it never costs you any more to buy a ticket—to buy the six-day ticket than it would cost you just to walk up to the ticket window and buy your one-day ticket.

Q. What sort of reason do I have to give to get a refund?

A. You don't have to give any reason.

Q. If I want to ski at Highlands?

A. Fine.

Q. I still get a refund?

A. Sure. People do that.

Q. Have they done it to you?

A. Oh, yes.

Q. And you give them their money back?

A. Of course. We don't require a reason. The only time that we require a reason is on a medical refund. Now, on a medical refund we assume that if you had not been injured

or had not gotten sick you would have used the whole ticket and you would have gotten the benefit of the discount; so on that ticket we do prorate it back to what you actually paid if you used the whole thing—what it would have cost you perday [sic] of skiing. In other words, I think last year in the High Season the ticket was $102, which is $17 a day as opposed to $18 a day on the one-day ticket. We would have refunded to you $17 per day that you didn't use the ticket, if it was a medical refund. In addition, we would also refund the day that you were—let's say you were [1663] injured. We would also refund that day.

Q. Let's say I am a skier who has come to Aspen and I have pre-purchased a three-area, six-day ticket and I have arrived in town and skied one day and I decided I wanted to go to Aspen Highlands.

A. That's fine.

Q. And I have purchased my six-day, three-area ticket through a tour operator.

A. With the tour operators, there is only one instance where it makes any difference to us how you use the ticket, and that is if you have come and you get there and you hate skiing and you are not going to go skiing and you just really don't want to go skiing; so you bring us in a whole ticket that has never been used at all. Well, now, if it was a commissionable ticket, you paid $102 for it to the travel agent, but we didn't get $102. We got $102 minus 15 percent or 10 percent; so at that point, we do take it out. But if you have used that ticket even once, we don't take anything out. We just slide you right into our overall refund policy and we take out the cost of a one-day ticket.

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[1664] Q. The example I would like to use for purposes of illustration, Ms. Taylor, is the one I mentioned a couple

of minutes ago. Let's say I pre-purchased the six-area—six-day, three-area ticket last year. I have come to Aspen. I bought the ticket through a tour operator. I have skied one day at Buttermilk and I have decided to go to ski at Aspen Highlands. I want to see how much of a refund I get from the money that was paid and at the same time, I am interested in seeing what that one day of skiing at Buttermilk netted to Aspen Skiing Corporation. Do you understand the question?

A. I think so. The ticket cost $102.

* * *

THE WITNESS: The ticket cost $102. That's what you paid for it. What we got for it, because it was a commissionable ticket, would be less 15 percent, so it would be $102 minus $15.30. So what we got from the ticket was $86.70. That was net to us.

Now, you skied on it one day?

Q. (By Mr. Maywhort) I skied on it one day at Buttermilk.

A. Okay. We are going to put you into the regular refund policy. The one-day ticket for last year was $18; so we are [1665] going to refund to you $84. So at this point, as far as you are concerned, it is the same as though you walked up to the ticket window and bought a one-day ticket. You are all through. We received $2.70 for the day that you skied at Buttermilk.

Q. Thank you.

A. Did I figure it wrong?

Q. So who ends up absorbing the 15 percent commission that was paid to the tour operator?

A. In this instance, the Aspen Skiing Corporation.

Q. Now, how does this policy differ, if it does at all, from the policy that was in effect during the years with the joint four-area ticket?

A. During those years, we generally—we also always took out some kind of a service charge; so the customer, no matter how many times he used the ticket or hadn't used the ticket at all, always had the service charge taken off the top before you went to the place where you took off the daily rate.

Q. Why do you do that?

A. We could not—we were dealing with two companies, and the administrative costs were quite high for us. Also we were unable to tell at that point when we had just the one four-area ticket whether it was commissionable or non-commissionable because we were still working with a voucher system in which in effect tickets that were commissionable were going out through the individual ticket window; so we had no real way to [1666] trace anything back.

Q. What sort of an effort is involved in a skier's obtaining a refund?

A. None. They just have to come to an adjustment office. If they don't have time to come to an adjustment office, they can mail us the ticket.

Q. So from your standpoint of having observed skiers and customers for several years, what in your observation are the impediments or barriers to a skier who wants to ski at Highlands after having purchased a multi-day ticket from the Aspen Skiing Corporation?

A. There are none. All he does, in effect, is lose his discount and gain the convenience of not having to go through the ticket lines.

* * *

Q. Now, we heard testimony in this case that during the 1977-'78 season, Aspen Highlands did, in fact, make refunds on the joint four-area ticket. Did you hear that testimony, Ms. Taylor?

[1667] A. Yes, I did.

Q. What was your reaction upon hearing that?

A. I was very surprised.

Q. Why?

A. I didn't think that Highlands had made any refunds.

Q. Do you know now whether the Highlands did in fact make any refunds?

A. Yes, I do. I went to the general ledger and they refunded that year approximately $800. We refunded that year on that four-area ticket approximately $110,000.

Q. Do you know how the numbers of checks written for refunds compared between the two companies?

A. Well, I know that we did over 1,200 individual checks, and perhaps I would have to go back into how many checks they wrote.

Q. Was it under 20?

A. I would assume it would have been under 20, yes.

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MR. EVANS (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[1670] Q. And so that the aspect that you are describing with regard to the refund policy now, being that there is no service charge or that Aspen Skiing Corporation absorbs the commission—that's new since 1977-'78.

A. Can we back up? May I look at something for a moment?

Q. Certainly.

A. On this commissionable ticket in 1977-'78—three-area ticket?

Q. Yes.

A. Okay. Only the commissionable ticket during that time had a service charge on it.

Q. I thought that's what I asked you. That would be a tour operator?

A. That's a tour operator—the ones that went through the window did not.

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[1671] Q. Is an explanation of the refund policy given to a skier each time he purchases a six-day ticket?

A. If there is any question in the skier's mind, it is.

Q. But it is not routinely—the technicalities and the nature of the refund policy aren't explained at the time of purchase on a standard basis.

A. No. I would say they probably are not. The tickets, however, are not marked "non-refundable."

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[1673] Q. Oh, well, you said the sales were comparable—sales of the Aspen Skiing Corporation multi-day tickets were comparable.

A. Well, skier days, if I am reading that audit correctly—then skier days is what you are dealing with. Do you want me to read you the numbers?

Q. Fine.

A. Okay. '62-'63, we show that we took back 18,000 coupons and we sold in our six-day—seven-day ticket 21,000 skier days, because we have to compare skier days. You can't just compare a ticket, because one ticket was worth one day and the other ticket was worth seven days.

In '63-'64, it was 26,000 coupons or skier days that were joined and 48,000 of our own skier days.

'64-'65 would have been 28,000 of the joint and 71,000 of the Aspen Ski Corporation's.

'65-'66 is 28,000 as compared to 67,000 skier days for the Skiing Corporation.

'66-'67 is 21,000 coupons or joint tickets compared to 71,000 skier days for the Aspen Skiing Corporation.

'67-'68 is 54,000 as compared to—this is year that is just about even—55,000 for the Aspen Skiing Corporation.

[1674] In '68-'69 and '69-'70, we started a trend to where there were more of the joint tickets than ours—than our multi-day tickets.

* * *

[1675] Q. So from the records that you have been [1676] able to review, Mrs. Taylor, the trend shifted in or about 1967-'68—that period of time—from that period of time forward—to the four-area ticket, because at that period of time Snowmass was also now developed. The four-area ticket became the more popular item, according to these records.

A. Yes. I believe so.

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Testimony of Charles R. Goeldner

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

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[1761] Q. Do you have any opinions, Dr. Goeldner, with respect to the competitive sitaution [sic] between these 13 Colorado vacation areas listed on Exhibit AA?

[1762] A. Well, yes, I do. I would say that these are the types of areas that are competing with each other. I would

have to add additional areas in the Rockies as the prime competitors. Now, there is no question but what a number of our Colorado ski areas compete in the international market; but they all compete in the natioanl [sic] market. Our skiers in Colorado come from Illinois, Texas, California—basically from all over the country, and they have a choice of going to these vacation areas, of going to Heavenly Valley, Sun Valley, Jackson Hole, Tahoe. Some of these ski areas are of a higher quality, offer a better product, are more competitive than others; and I would say that these are basically the ski areas where there is the competition for the destination resort skier, and they have to work hard to get them and they have to work hard to improve their product, their marketing effort, and so on.

Some of them, due to their size, have an advantage that they are more attractive. For example, Snowmass, Vail, Heavenly Valley, are all of substantial size, where they have a reputation such as Sun Valley; and so they all have their various competitive advantages and disadvantages. But this is basically where the prime competition exists for the destination skier.

* * *

[1772] Q. Dr. Goeldner, do you have any understanding with respect to the degree of customers in Aspen who come on a package?

A. Yes, I do. If we look at those skiers who come to Aspen, it will vary in different years; but roughly about 20 percent of the skiers who arrived in Aspen in the latest Aspen in-room skier study stated that they had come to Aspen on a package. If you go back further, you can go back to '73-'74. I could cite you a figure of 35 percent that came on a package. Since then, the airlines have backed off on their packages a little bit, and I would say that if we are talking about current market conditions that probably we are talking about 20 percent of the skiers who would arrive there on a package.

Q. Do packages typically include a pre-sold lift ticket?

A. Yes, they do. Usually when you are talking about a package, a package will include transportation, lodging, and lift ticket. That is not true in all cases, but that is the typical situation. That is sort of considered to be the standard [1773] of the industry.

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[1775] Q. Dr. Goeldner, are you familiar with the phrase or the term "borrowed support"?

A. Yes, I am. It is a term I se [sic] very frequently in my classes. It is a marketing term that we talk about in reference to location.

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Q. And does it apply, or what application does it have [1776] in your opinion to this case?

A. It was one of the first things that I thought of when I thought of this situation and this case; and that is that if we look at the Aspen situation, we have four mountains there together. If we look at the Aspen Skiing Corporation mountains, they are in my opinion the most attractive mountains there. Physically they are the most attractive. They have the highest quality skiing, the best snow grooming. They are known worldwide for this. Snowmass we have already talked about as being one of the best ski areas in the country; and so basically they are what I would call the anchor of skiing in Aspen.

If you were going to build a shopping center, you would put in a department store or two department stores, and those would be the anchor stores. Then you would have a lot of smaller stores around them; and this is what we mean by borrowed support. That would be a very good location for a smaller store, because the department store, the anchor store, would attract customers, bring them to that

particular facility. Then enough of them would slop over into your shoe store. If you have any kind of management at all, you are likely to be successful. I have said in this case instead of suing the Aspen Skiing Corporation, Aspen Highlands should thank them because they bring an incredible number of skiers to Aspen because they are the anchor. They are the reason that the destination skiers decide to go to Aspen, and Highlands, while they have them there—[1777] they do have a shot at them. They are a possible choice.

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Q. Do you have an opinion as to the desirability of the advertising in trying to create a particular product image?

A. Yes, I do.

Q. What is that opinion?

A. When you are trying to create a product image, you are trying to sell your product in the marketplace. You want to first of all do a lot of product planning. You want to position yourself in the market at what level you might want to compete; and once you determine where you are going to compete, you want to come up with the highest quality product possible and you want to attract customers to your product.

Now, you will find that in marketing the kind of marketing strategy you are going to use is going to depend upon the product and the marketplace. There are times when you might want to engage in some kind of cooperative marketing efforts. Now, we have seen that in the ski industry—we have seen Colorado [1778] Ski Country U.S.A., which basically doesn't market any particular area. They market Colorado skiing, come to Colorado, Colorado Ski Country U.S.A., best in the world. We also saw an organization which is almost defunct now called Ski the Rockies; and again that was a cooperative effort, with Ski the Rockies, come to the Rockies, with no specific area being singled out.

When you are new and starting, you typically want to put a lot of your effort into that kind of thing, because it may be a matter of their skiing in the Rockies or not skiing at all. Once you get them to come and they become familiar with your area and so on, then you begin to move into what I call using selective appeals or a combination of primary and selective appeals.

Now, you have got the customer out there, so now you are selling your area and you are trying to get them to select your area over all the other choices that they have. The ski industry has reached a stage of maturity where it still has sense to do a little bit of cooperative effort, because that's good for the industry and good for everybody; but people are still using selective appeals in trying to get people to select their areas.

As a marketing professor, I think I would probably lose my job for incompetence if I said that one competitor should advertise another competitor's product. The very essence of competition and what makes our country tick is that we want [1779] to get people to use our product. The only way we can get them to use our product is to make it better, of higher quality, to give more quality for the money than our compeition. When we do that and we attract a customer, then that makes our competition lose customers, or we have to have an expanded market if that doesn't take place. Well, if he loses customers, that is going to be a very traumatic experience for him; so what is he going to do? He is going to improve his product.

Then we go back and the other competitor improves his product, and that way we get the maximum of consumer satisfaction, and that is the essence of what our country has worked on and why I think we have the best products in the world and why competition has worked for us.

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MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

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[1796] Q. Let's talk for a moment about your views on the growth of ski areas. Is it true that the number of skiers that can come to Aspen is limited by the number of beds that are in Aspen?

A. There has to be some kind of a ratio between the beds and places for skiers to stay, and also the mountain capacity. I would say it is probably more limited by pillows. We tend to talk about pillows at ski areas, and it would be somewhat limited by that factor.

Q. Are you familiar with whether or not there are any restrictions in Pitkin County in terms of how many pillows people can build?

A. The Aspen situation is well-known. It is the same as Boulder's for growth management control, and there is a certain amount of development that can go on. One cannot come in and arbitrarily throw up all sorts of units. I am not aware of all of the regulations.

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[1800] Q. Now, have you reviewed any of the promotional materials of Aspen Highlands or the Aspen Skiing Corporation?

A. Yes. I tried to review the promotional materials of all the ski areas every year.

Q. And isn't it true that with respect to the promotion—the promotional materials used by the Aspen Skiing Corporation on the national market that that promotional material emphasizes the Town of Aspen, the variety of skiing, and the snow conditions? [1801] Isn't that correct?

A. The promotional material that I have reviewed for Aspen Skiing Corporation that they use in the national

market, whether it be media advertising, whether it be brochures—they feature Aspen, which is the name of their mountain. Let's talk about the brochure. They feature Aspen, which is the name of their mountain. It is also the name of the town.

They will say in their brochures to ski Aspen's three mountains of Snowmass, Buttermilk, and Aspen Mountain. They will also then include in that brochures pictures of people having a good time and so on; and they will probably give, I would say, about equal space, equal copy, to the town and say that it is charming and that it has the victorian atmosphere and that it has X number of good restaurants and anything else that they feel that they can mention which would give that downhill skiing experience value and make it competitive with the same type of experience that you get at Vail, which also has restaurants, though it does not have the charming victorian town.

Q. Is it your interpretation of those national advertisements that when they say, "Ski Aspen's three mountains," what they really meant was to ski Aspen Skiing Corporation's three mountains?

A. That is what they are trying to get the consumer to do. This is what I referred to earlier when we talked about [1802] selective appeals. They are trying to use an appeal to get the consumer to select their product.

Q. Okay; so when they say, "Aspen," they meant Aspen Skiing Corporation. Is that correct?

A. I would interpret it that way, yes.

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Q. So it's true if they haven't been there before they would look at these advertisements and think that there are three mountains rather than four mountains in Aspen. Isn't that correct?

A. No. I can't agree with that because in their advertising and in their brochures, they do have a picture of all [1803] four. So it would depend upon how observant they are whether they realized there were three or four mountains there.

MR. TRAUTMAN: Would the Clerk hand the witness Exhibit 103, please. I believe it is the magazine.

Q. Would you look at the page that has the clip on it, please.

A. The clip must have been—wait a minute. Okay. I found it.

Q. Now, is that a national advertisement that you are familiar with?

A. Yes, it is.

Q. And is it true that that advertisement shows the map of Aspen and labels three of the mountains on that map?

A. Yes, it is.

Q. And is it true that the Buttermilk label is right over Aspen Highlands?

A. Well, needing bifocals, I can't find any labels on the ads. Oh. I see what you are saying.

Q. I am not saying anything. I am asking you.

A. Yep. If we look at the picture and we look at it from left to right, the Buttermilk label with its vertical rise and so on is in the middle, and if I look directly up the top of the ski slopes at Aspen Highlands, I would run into the Buttermilk name. Yes.

• • •

[1805] Q. Let's look at '73-'74, '74-'75, and '75-'76 and '76-'77. Do you see those figures, Dr. Goeldner?

A. Yes. I have been reviewing those figures, and it is correct that over that period of time that Aspen Highlands had a greater number of skier visits than Buttermilk, as was also true in the early 70's, when there was not a four-area ticket.

Q. Is it your understanding there was no four-area ticket in the early 70's?

A. It is my understanding that in '70 and '71 and '71 and '72 that there was not a four-area ticket.

Q. Were you here for the testimony yesterday of Kay Taylor?

A. No, I was not.

Q. Let's look at what happened after the elimination of the four-area ticket to the relative market share between Aspen Highlands and Buttermilk. Did the consumer preference change at that point?

A. Now, what is it you want me to look at?

[1806] Q. What happened in the years '78-'79 and '79-'80 to the relative market share between Aspen Highlands and Buttermilk?

A. It appears that Buttermilk increased its skier visits and consequently it increased its market share, and that occurred in all three of those subsequent years.

Q. Okay. Now, is it your testimony that the consumer preference is really judged by skier visits or the lift tickets that they buy?

A. As I said earlier, the consumer is voting in the marketplace. Their preceptions of value and what they are getting for their money are voted in the marketplace. But as I said earlier, you can't ski on a lift ticket or eat it. It is a vehicle to get you up to the slopes.

Q. All right; and is it true that the voting changed about the time that the four-area ticket was eliminated at least with respect to Buttermilk and Aspen Highlands?

A. In respect to Buttermilk and Aspen Highlands, it appears that there has been that change.

Q. All right; and it is your opinion that that is a change in consumer preference over what had existed previously. Is that correct?

A. I would say yes.

Q. In other words, in the year '77-'78, people all of a sudden took a liking relatively speaking to Buttermilk over Aspen Highlands. Is that correct?

[1807] A. Well, again I think that we can't simply answer that yes or no. It is a more complicated situation than that.

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[1809] Q. Let's identify the study, first of all, Dr. Goeldner. This is the 1979-'80 study which you did in conjunction with another person. It that correct?

A. Yes.

Q. Okay; and this is a study that was done in a year when there was no four-area ticket. Is that correct?

A. That is correct.

Q. Now, isn't it true that you asked the question, "What area would you like to ski but won't?" And you got multiple responses. For Aspen Mountain, there were 116 that said that they would like to ski it but they wouldn't. Snowmass, there were 50 that said they would like to ski it but wouldn't. Buttermilk, there were 64; and 176 said that they would like to ski Aspen Highlands but they wouldn't. Is that correct?

A. That is correct; and that was all the cases of people. There were multiple responses there. Now, if you were to go back and take the responses, then that 53 percent would have been roughly about 40 percent—still a very sizable number, but we do have multiple responses there. That was all cases, rather than the responses in the study; and so I would like to make that clear.

• • •

[1816] Q. And isn't it true that of the 39.9 percent that said that the lift ticket was not good on other mountains that what they were talking about was Aspen Highlands?

A. I would say yes, that that is most likely the correct interpretation of that data.

• • •

[1821] Q. Would you agree that the type of ski school that's available in a destination resort is important?

A. Yes, I would.

Q. Would you agree that GLM is a very popular and very innovative ski method?

A. That is an area where I would give Aspen Highlands an A. They have kept up with the marketplace, and in the area of the ski school they have given the customer what they wanted.

I would be somewhat critical of Aspen Skiing Corporation for not moving to GLM and offered that.

• • •

Q. Isn't it true that in your '77-'78 survey that you asked the question about where people went to ski school once they arrived in Aspen? Do you recall that?

A. Yes, very definitely.

Q. Do you recall the very high percentage—much higher percentage than the market share of skier visits—

said they went to Aspen Highlands rather than to any of the other Aspen mountains?

[1822] A. Yes, I do. That particularly caught my attention, and I think it stuck out as something like 26 percent, and their share was closer to 15 percent. That bothered me, because I said, "Well, you know, it ought to be consistent in a survey; and we have some problems with our methodology?" So in visiting with people, they told me that they would expect to have it be that way because Highlands has a good ski school, and they offered GLM, and they felt that was attracting customers to that ski school.

Q. These people that you visited with were people from the Aspen Skiing Corporation, weren't they?

A. That is correct.

Q. And why don't you tell the jury what they said about the Aspen Highlands Ski School? First of all, who were they? Mr. Brendlinger?

A. I am not positive, but I think it was probably Mr. Brendlinger and Mr. Biedleman. I said, "Now, if you were to look over this data, would it bother you at all?"

They said no, they would expect that, and they mentioned the GLM. They said it was attractive and that for their own reasons that their ski school director had chosen to follow the older method of ski school instruction.

Q. Now, this statistic that we were just talking about was during the '77-'78 season, when there was still a four-area ticket available. Isn't that correct?

[1823] A. I believe that's correct.

• • •

Testimony of Stacy Standley

MR. PALMER (COUNSEL FOR ASPEN SKIING CORPORATION, BUTTERMILK MOUNTAIN SKIING CORPORATION, AND SNOWMASS SKIING CORPORATION)

• • •

[2045] Q. Let's turn our attention to the Little Annie project which is underway in Aspen. What has been your involvement with that project?

A. In the spring of 1975, Snow Engineering was asked to submit a proposal to undertake the master planning of Little Annie for Dave Farney, the proponent for the project. I drafted the proposal which was accepted; and during the summer of 1975 and up to October of 1975, when we submitted the master plan for the Little Annie project, I was the Project Director and Chief Planner on the project.

Q. Did you continue to have a consulting relationship on the Little Annie project up through the time you left Snow Engineering?

A. Yes, I did; and Snow Engineering still has an ongoing consulting relationship with Little Annie.

Q. And from time to time, they call on you in that regard?

A. Yes.

Q. Where does Little Annie stand now in the approval process?

A. Well, one of the offshoots of the Colorado Winter Resource Advisory Committee that I served on and explained earlier was the development of the Colorado Joint Review Process, which was an administrative approval process that was set up by [2046] the state that would bring together all of the government or quasi-governmental agencies that would have to make decisions regarding a ski area, and that would include the Forest Service, the city, the county, and the state, perhaps the municipal sanitation district—whatever other type of agencies would have to deal with a new ski area being developed within their

environment. That process requires going through a series of hoops that takes approximately five years.

Little Annie is now reaching the end of that five-year hoop-jumping process, if you will. It's received the approval of the City of Aspen at this point. The draft environmental impact statement has been circulated by the Forest Service, and the final environmental impact statement will be out this month, June, 1981. The county has their final meeting, or perhaps their final meeting, on the resolutions on June 22, which is next Monday, I believe; and the state has yet to pass judgment or blessing, as the case may be, on the Little Annie project.

• • •

Q. Do you have any basis on which to believe that the state approval will be forthcoming or not?

[2047] A. I have been involved in the discussions and work sessions for several years that include the State Planning Office Paula Hertzmark's office; and though I haven't sat in on any in the last few months, I know what the tone has been and what the general concerns have been and the position the state appears to be taking.

Q. What is that?

A. It appears that if the local government agencies support Little Annie, then the state also supports the project.

Q. Are the local agencies supporting Little Annie at this point?

A. The city, as I have said, already has passed support on it, and the county has not completed its investigation. It has not made a final determination but is preparing resolutions that would allow them to take that action should they choose to take that action, next Monday.

Q. To approve the project?

A. Yes.

Q. What capital investment is Little Annie contemplating in opening their new area?

A. It will require between 32-and $34-million to develop the area to a level of 4,500 skiers per day capacity.

Q. When is Little Annie projected to open?

A. Right now, the planning process schedule is in the 1983-'84 season.

* * *

[2050] Q. Did you work on the economic analysis and projections for Little Annie?

A. Yes, I did.

Q. In doing that economic analysis, did you assume that there would be or that there would not be a multi-area ticket in Aspen?

A. No. We did not assume a multi-area ticket. In fact, one of our strategies was to look at differential pricing as a means of inducing or enticing skiers to use our mountain, to experience it.

Q. What do you mean by assuming differential pricing?

A. A different price than the other areas would be charging. In our case, we were looking at a lower price.

Q. Is there any reason to believe that Little Annie will not proceed on schedule?

A. None that I am aware of.

* * *

[2074] Q. What was the subject of your discussions?

A. It was that Snow Engineering had been approached by a client that was interested in perhaps making an offer to purchase the Aspen Highlands ski area from Mr. Jones.

Q. Was that client at that time 20th Century Fox?

A. Yes, it was.

* * *

[2075] Q. Did you also have discussion with Mr. Jones concerning his activities at the national level as opposed to the local level?

A. Well, we did, only in that I was trying to develop information for putting together an analysis for the client.

Q. Okay. What was said by you about those subjects and what was said by him?

A. Well, what I was trying to do was a financial analysis and I asked Mr. Jones if I could have his copy or Xerox copies of the National Ski Areas Association financial questionnaire, the economic questionnaire that was filled out yearly by the area operators. Mr. Jones told me that it didn't belong to the National Ski Area Association.

I said, "Well, why not?" or something to that effect.

He said, "Because Aspen Skiing Corporation belongs, and I don't need to. They take care of the big things, and I take care of my operation."

* * *

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

* * *

[2079] Q. Do you understand that that's what the Aspen Highlands five-year plan is intended to do?

A. Yes. I do see that.

Q. With respect to your involvement in Little Annie, is it true that Little Annie started prior to '75-'76 season?

A. Little Annie had been a proposed ski area since, I believe, the 1940's, as a matter of fact.

• • •

[2080] Q. So there is no Forest Service permit at this point in time?

A. There isn't. There will be a recommendation as part of the EIS.

Q. And at this point in time, the county has not approved Little Annie; is that correct?

[2081] A. The county has drafted resolutions, but it has not acted on those resolutions.

Q. Now, if, in fact, Little Annie receives the approvals that you think it will of the county, the state, and the Forest Service, it is possible, is it not, for Mr. Farney and his limited partners to transfer that permit to some other party?

A. With approval of the Forest Service, that can be done. It is conditional. It also would require the approvals of the state and the county.

Q. But in fact that can take place so that Aspen Skiing Corporation could acquire the right to develop Little Annie, just like they acquired the right to develop Snowmass. Isn't that correct?

A. I suppose that if they were able to successfully negotiate something along those lines, that is possible.

Q. Okay. The capital costs of Little Annie, 34- [sic] to $34-million—that works out to almost $10,000 a skier visit, doesn't it?

A. I think it would be 8,000.

Q. 8,000?

A. It would be a ballpark figure.

Q. Do you know how that compares to what the average development costs are at this point in time for a major ski area?

A. It is well in excess of the average cost of major ski [2082] areas.

Q. It is a heavy financial investment, is it not, for Mr. Farney and his group of investors?

A. I would say that yes, it is.

Q. Is it true that they have not received any financial commitments beyond the initial capital contributions that we discussed for development?

A. I am really not at liberty to say.

Q. Do you know?

A. I do know.

Q. Why aren't you at liberty to say?

A. Because of the client/consulting relationship.

• • •

Q. Okay. You can't tell me whether or not they have got financial commitments at this point in time and from whom?

A. I can't tell you that.

• • •

Testimony of Whipple V.N. Jones (Recalled)

MR. TRAUTMAN (COUNSEL FOR ASPEN HIGHLANDS SKIING CORPORATION)

• • •

[2187] Q. Now, with respect to the last item—this additional $2-million because you are located in Aspen, do you consider that to be something that was a windfall to you?

A. To a certain extent; but also we were the second ski area there, and I think we contributed a lot to the community in [2188] its development. When we started out,

there were 10 lodges. Now there are over 100. The same thing is true about restaurants and other facilities there. I really think that Aspen Highlands put in a lot of innovative ideas: Picnics, NASTAR, GLM, and we put Cadillac machinery on the mountains. I think our organization had a lot to do with helping Aspen to grow.

• • •

[2191] DEFENDANTS' RENEWED MOTIONS FOR A DIRECTED VERDICT

MR. PALMER: Your Honor, at this time the defendants renew and reassert their motions for directed verdict; and I would incorporate the arguments made at the close of the plaintiff's case. We think that in all of the issues, including both the Section 2 and the Section 1 issues that plaintiff has proved our case under the decisions cited in our trial brief.

In order to save time, however, I think as to the Section 2 claims I will simply incorporate our prior argument. We think that all of the evidence is that first of all the [2192] relevant market is not so narrowly confined as to include Aspen, because 80 percent of these skiers are repeat skiers. They know the area. They routinely go other [sic] areas. There is not distinct [sic] group of customers that's been shown; and all of the evidence has shown that all of these mountains compete at the destination resort level. We don't think that the fact that Aspen Highlands has chose [sic] to concentrate its advertising at a local level, if, in fact, it has, has anything to do with the economic analysis and the competitive realities at issue in this case.

We also believe, Judge, that Dr. Goeldner presented the only competent economic testimony in this case, and that testimony was that there is not [sic] showing of monopoly power. There is certainly under the facts as in evidence no showing of a power to control price or to exclude competition.

• • •

[Jury Instructions]

THE COURT:

• • •

[2310] On the other hand, if you do find monopoly power, you must consider the second essential element: Whether Aspen Skiing Corporation willfully acquired, maintained, or used that power by anti-competitive or exclusionary means or for anti-competitive or exclusionary purposes.

"Willfully" as used in these instructions means acting knowingly and deliberately, but it does not mean that Aspen Skiing Corporation must have specifically intended to achieve or maintain monopoly power.

In considering whether the means or purposes were anti-competitive or exclusionary, you must draw a distinction here between practices which tend to exclude or restrict competition on the one hand and the success of a business which reflects only a superior product, a well-run business, or luck, on the other. The line between legitimately gained monopoly, its proper use and maintenance, and improper conduct has been described in various ways. It has been said that obtaining or maintaining monopoly power cannot represent monopolization if the power was gained and maintained by conduct that was honestly industrial. Or it is said that monopoly power which is thrust upon a firm due to its superior business ability and efficiency does not constitute monopolization.

[2311] For example, a firm that has lawfully acquired a monopoly position is not barred from taking advantage of scale economies by constructing a large and efficient factory. These benefits are a consequence of size and not an exercise of monopoly power. Nor is a corporation which possesses monopoly power under a duty to cooperate with its business rivals. Also a company which possesses monopoly power and which refuses to enter into a joint operating agreement with a competitor or otherwise refuses to deal

with a competitor in some manner does not violate Section 2 if valid business reasons exist for that refusal.

In other words, if there were legitimate business reasons for the refusal, then the defendant, even if he is found to possess monopoly power in a relevant market, has not violated the law. We are concerned with conduct which unnecessarily excludes or handicaps competitors. This is conduct which does not benefit consumers by making a better product or service available—or in other ways—and instead has the effect of impairing competition.

To sum up, you must determine whether Aspen Skiing Corporation gained, maintained, or used monopoly power in a relevant market by arrangements and policies which rather than being a consequence of a superior product, superior business sense, or historic element, were designed primarily to further any domination of the relevant market or sub-market.

* * *

PLAINTIFF'S TRIAL EXHIBITS

Plaintiff's Exhibit #97

TABLE

ASPEN HIGHLANDS CASE

ACTUAL SKIER-VISIT SUPPLY, DEMAND AND UTILIZATION

	1973-74		1974-75		1975-76		1976-77		1977-78		1978-79		1979-80		1980-81	
	S-V (000)	SHARE %	S-V (000)	SHARE %	S-V (000)	SHARE %	S-V (000)	SHARE %	S-V (000)	SHARE %	S-V (000)	SHARE %	S-V (000)	SHARE %	S-V (000)	SHARE %
SUPPLY (CSV)																
Aspen Corp. (3 Areas)	1,898.8	74.9%	1,940.6	77.3%	2,127.0	75.9%	1,509.8	69.1%	2,174.1	76.3%	2,001.0	73.9%	2,076.0	75.5%	2,048.0	75.2%
Aspen Highlands	637.2	25.1%	570.8	22.7%	673.6	24.1%	673.6	30.9%	673.6	23.7%	708.0	26.1%	673.6	24.5%	673.6	24.5%
Total Aspen	2,536.0	100.0%	2,511.4	100.0%	2,800.6	100.0%	2,183.4	100.0%	2,847.7	100.0%	2,709.0	100.0%	2,749.6	100.0%	2,721.6	100.0%
DEMAND (SKIER-VISITS)																
Aspen Corp. (3 Areas)	849.2	84.2%	930.0	82.9%	1,023.6	82.6%	421.4	79.5%	1,073.9	84.3%	1,140.3	86.9%	1,148.6	87.5%	875.8	89.0%
Aspen Highlands	158.9	15.8%	191.9	17.1%	214.9	17.4%	108.4	20.5%	199.5	15.7%	172.3	13.1%	163.7	12.5%	108.7	11.0%
Total Aspen	1,008.1	100.0%	1,121.9	100.0%	1,238.5	100.0%	529.8	100.0%	1,273.4	100.0%	1,312.6	100.0%	1,312.3	100.0%	984.5	100.0%
UTILIZATION																
Aspen Corp. (3 Areas)	44.7%		47.9%		48.1%		27.9%		49.4%		57.0%		55.3%		42.9%	
Aspen Highlands	24.9%		33.6%		31.9%		16.1%		29.6%		24.3%		24.3%		16.1%	
Total Aspen	39.8%		44.7%		44.2%		24.3%		44.7%		48.5%		47.7%		36.2%	
SUPPLY/DEMAND INDEX																
Aspen Corp. (3 Areas)		1.124		1.072		1.088		1.151		1.105		1.176		1.159		1.184
Aspen Highlands		.623		.733		.722		.663		.662		.502		.510		.444

PLAINTIFF'S EXHIBIT 97 79-Z-1012

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Plaintiff's Exhibit #103

Aspen

More Mountains, More Fun

Aspen's three mountains...Aspen, ttermilk and Snowmass...promise a ry different kind of skiing experience. It rts with 2,335 acres of ski slopes and endless variety of skiing terrain.

Add in lots of snow...300 inches on e average fall every year...and one lift ket for all three mountains, and you ow why three out of four of our skiers ve been here before.

Off the slopes, you'll discover the town. One hundred years old, Aspen is Victorian buildings and charming shopping malls, over 100 restaurants and nightspots, friendly people and a sense of history. It's another reason one Aspen visit is never enough.

Write for our exciting winter brochure.

Aspen Skiing Corporation

Box 1248, Aspen, Colorado 81611 • 303/925-1220

Aspen Mountain, Buttermilk, Snowmass

One day, adult $18

Six days, adult
(good for 6 out of 7 consecutive days)

Low season — November 27-December 20, 1980; January 1-January 31, 1981; March 26-April 2, 1981 .... $90

Regular season — December 20-January 3, 1980; January 31-March 28, 1981 $102

Aspen Mountain only
Young at Heart (65 and older) $12

Buttermilk and Snowmass only

Half-day, adult
Starts at Buttermilk at 12:00 p.m.... $10
Starts at Snowmass at 1:00 p.m. ... $10

Child (12 and younger)
One day $6

Young at Heart (65 and older)
One day $6

Aspen Central Reservations
303 925-9000

Cards Welcome

Aspen Mountain.

- Vertical Rise: 3300 feet
- Lifts: 7 double chairs
- Most Difficult: 75%
- More Difficult: 25%
- Longest Run: 3 miles

Opening & Closing Dates: December 6, 1980-April 12, 1981.

Buttermilk.

- Vertical Rise: 2000 feet
- Lifts: 5 double, one T bar, one pony lift
- Most Difficult: 19%
- More Difficult: 33%
- Easier: 49%
- Longest Run: 2 miles

Opening & Closing Dates: ...ember 27, 1980- March 29, 1981.

Snowmass.

- Vertical Rise: 3600 feet
- Lifts: One triple chair, 11 double chairs
- Most Difficult: 25%
- More Difficult: 60%
- Easier: 15%
- Longest Run: 3.5 miles

Opening & Closing Dates: November 27, 1980- April 12, 1981

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IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-7-1012

ASPEN HIGHLANDS SKIING CORPORATION,
a Colorado corporation,

Plaintiff,

v.

ASPEN SKIING CORPORATION,
a Delaware corporation, *et al.*

Defendants.

DEFENDANTS' PROPOSED JURY INSTRUCTIONS

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* * *

Defendants' Requested Jury Instruction No. 19

(Monopolization)

The mere existence of monopoly power does not violate the law unless there is also proved to be a purpose and intent by defendants to exercise such monopoly power through anticompetitive actions.

United States v. Griffith, 334 U.S. 100, 107, 68 S.Ct. 941, 92 L.Ed. 2d 236 (1948); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263 (2d Cir. 1979).

* * *

Defendants' Requested Jury Instruction No. 20

(Monopolization)

An intent to misuse monopoly power is not inferred from the fact that a monopolist competes aggressively with its business rivals, even though that competition may result in

economic damage to the competitor or enhancement of a monopolist's own market position, if the conduct constitutes normal competitive behavior which is intended to meet competition and does not unreasonably restrict competition. In addition, a monopolist is not under a duty to cooperate with its business rivals. A monopolist engages in a normal competitive practice when it acquires or maintains its market position as the result of improved marketing, superior technology, superior management, superior service or product improvement.

Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263 (2d Cir.); *California Computer Products v. IBM Corp.*, 613 F.2d 727 (9th Cir. 1979); *International Railways of Central America v. United Brands*, 532 F.2d 231 (2d Cir. 1976); *Sargent-Welch Scientific Co. v. Ventron Corp.* 567 F.2d 701 (7th Cir. 1977); *See, Natrona Service, Inc. v. Continental Oil Co.*, 435 F.Supp. 99 (D. Wyo. 1977).

* * *

Defendants' Requested Jury Instruction No. 21

A monopolist who refuses to enter into a joint operating agreement with a competitor or who otherwise refuses to deal with a competitor in some manner, does not violate Section 2 if valid business reasons exist for that refusal. In other words, if there were legitimate business reasons for the refusal, then the defendant, even if he is found to be a monopolist in a relevant market, has not violated the law.

Mid-Texas Communications v. American Tel & Tel Co., 615 F.2d 1372, 1387 (5th Cir. 1980); *Byars v. Bluff City New Co., Inc.*, 609 F.2d 843 (6th Cir. 1979); *International Railways of Central America v. United Brands*, 532 F.2d 231 (2d Cir. 1976).

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-Z-1012

ASPEN HIGHLANDS SKIING CORPORATION,
a Colorado corporation,

Plaintiff,

v.

ASPEN SKIING CORPORATION, a Delaware corporation,
BUTTERMILK MOUNTAIN SKIING CORPORATION,
a Colorado corporation, and
SNOWMASS SKIING CORPORATION, a Colorado corporation,

Defendants.

SPECIAL INTERROGATORIES TO THE JURY

We, the Jury, hereby answer these Special Interrogatories as follows:

I. MONOPOLIZATION:

A. Relevant Market

1. Product Market: What do you find to be the relevant product market in this case? (Check one)

   _X_ (a) Downhill skiing at destination ski resorts

   ____ (b) Downhill skiing services in Aspen including multi-area, multi-day lift tickets.

   ____ (c) Other _____
   (Describe)

2. Do you find that there is a relevant product submarket?

_X_ Yes

___ No

3. If your answer to Question 2 is yes, identify the relevant product sub-market.

Downhill Skiing Services in Aspen including Multi-AR, Multi-Day Lift Tickets.

4. Geographic Market: What do you find to be the relevant geographic market?

_X_ North America

___ Aspen Area

___ Other _____
(Describe)

5. Do you find there is a relevant geographic sub-market?

_X_ Yes

___ No

6. If the answer to Question 5 is yes, identify the relevant geographic sub-market.

Aspen Area

B. Monopoly Power: Do you find by a preponderance of the evidence that during the years 1977 through 1981 the defendants possessed monopoly power, that is, the power to control prices in the relevant market or sub-market or to exclude competition from the relevant market or sub-market?

_X_ Yes

___ No

If your answer to the preceding question is "yes," proceed to Question I.C. If your answer to the preceding question is "no," proceed to Question II.

C. Willful Acquisition, Maintenance or Use of Monopoly Power: Do you find by a preponderance of the evidence that the defendants willfully acquired, maintained or used monopoly power by anticompetitive or exclusionary means or for anticompetitive or exclusionary purposes, rather than primarily as a consequence of a superior product, superior business sense, or historic accident?

_X_ Yes

___ No

If your answer to the preceding question is "yes," proceed to Question I.D. If your answer to the preceding question is "no," proceed to Question II.

D. Damages:

Do you find by a preponderance of the evidence that the plaintiff suffered injury in its business as a direct result of the defendants' willful acquisition, maintenance or use of monopoly power?

_X_ Yes

___ No

II. CONTRACT, COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE:

A. Contract, Combination or Conspiracy:

1. Do you find by a preponderance of the evidence that the defendants contracted, combined or conspired with some other person or entity not a party to this case to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means?

___ Yes

_X_ No

If your answer to the preceding question is "yes," proceed to Question II.A.2. and then to Question

II.B. If your answer to the preceding question is "no," proceed to the signature block below and sign and date these Special Interrogatories.

2. Indicate below the name of the person or entity with whom you find that the defendants agreed to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means.

_____

_____

B. Anticompetitive Effects: Do you find by a preponderance of the evidence that any contract, combination, or conspiracy constituted an unreasonable restraint of trade?

____ Yes

____ No

If your answer to the preceding question is "yes," proceed to Question II.C. If your answer to the preceding question is "no," proceed to the signature block and sign and date these Special Interrogatories.

C. Damages:

Do you find by a preponderance of the evidence that the plaintiff suffered injury in its business as a direct result of any contract, combination or conspiracy?

____ Yes

____ No

III. AMOUNT OF DAMAGES:

If your answer to Question I.D.., or II.C., or both, is "yes," indicate below the dollar amount of such actual damages, if any, to which you find by a preponderance of the evidence that the plaintiff is entitled.

$2,500,000.00.

Respectfully submitted,

/s/ C. ALAN ROTH
Foreperson of the Jury

DATED: June 18, 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-Z-1012

ASPEN HIGHLANDS SKIING CORPORATION,
a Colorado corporation,

Plaintiff,

v.

ASPEN SKIING CORPORATION, a Delaware corporation,
BUTTERMILK MOUNTAIN SKIING CORPORATION,
a Colorado corporation, and
SNOWMASS SKIING CORPORATION, a Colorado corporation,

Defendants.

JUDGMENT

THIS ACTION came on for trial on the 1st day of June, 1981, before the Court and a jury of six duly sworn to try the issues herein, the Honorable Zita L. Weinshienk, Judge, presiding.

The trial proceeded to conclusion and the jury duly rendered its special verdict in the form of interrogatories. The summary of the verdict was that the jury found the issues herein joined in favor of the plaintiff and assessed its damages in the sum of $2,500,000.

The jury found by a preponderance of the evidence that the relevant product market was downhill skiing at destina-

tion ski resorts, that the relevant sub-market was downhill skiing services in Aspen including multi-area, multi-day lift tickets, that the relevant geographic market was North America, and that the relevant geographic sub-market was the Aspen area. The jury further found by a preponderance of the evidence that during the years 1977 through 1981 the defendants possessed monopoly power, and that the defendants willfully acquired, maintained or used monopoly power by anticompetitive or exclusionary means or for anticompetitive or exclusionary purposes, rather than primarily as a consequence of a superior product, superior business sense, or historic accident. The jury further found that the plaintiff suffered injury in its business as a direct result of the defendants' willful acquisition, maintenance or use of monopoly power.

The Court finds that federal law, 15 U.S.C. §15, requires that the plaintiff recover threefold the damages. It is therefore

ORDERED that Judgment enter for the plaintiff, Aspen Highlands Skiing Corporation and against the defendants Aspen Skiing Corporation, Buttermilk Mountain Skiing Corporation and Snowmass Skiing Corporation in the sum of $7,500,000.00, plus attorneys' fee and costs.

IT IS FURTHER ORDERED that there be a twenty (20) day stay of execution, during which time motions, briefs and affidavits may be filed.

The Court will rule on injunctive relief and attorneys' fees within thirty (30) days.

For The Court:
JAMES R. MANSPEAKER, Clerk

/s/ By: STEPHEN P. EHRLICH
Chief Deputy Clerk

Approved:

/s/ ZITA L. WEINSHIENK, Judge
ZITA L. WEINSHIENK, Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 79-Z-1012

ASPEN HIGHLANDS SKIING CORPORATION,
a Delaware corporation,
Plaintiff,

v.

ASPEN SKIING CORPORATION, a Delaware corporation,
BUTTERMILK MOUNTAIN SKIING CORPORATION,
a Colorado corporation, and
SNOWMASS SKIING CORPORATION, a Colorado corporation,
Defendants.

INJUNCTION

Following the trial of this matter, and the entry of judgment herein on June 19, 1981 pursuant to special interrogatories returned by the jury, it is:

ORDERED, ADJUDGED and DECREED as follows:

I.

This Court has jurisdiction over the subject matter of this action and over the parties hereto.

II.

As used in this Injunction:

A. "Defendants" refers collectively to all of the defendants herein; "Aspen Skiing Corporation" refers to and includes the Aspen Skiing Corporation and its subsidiaries Snowmass Skiing Corporation and Buttermilk Mountain Skiing Corporation.

B. "Joint four-area, six-day ticket" means a ski lift ticket offered jointly by Aspen Highlands Skiing Corporation and

Aspen Skiing Corporation which accords the holder of the ticket access to the ski lifts operated in Pitkin County, Colorado both by Aspen Highlands Skiing Corporation and by Aspen Skiing Corporation.

III.

The provisions of this Injunction shall apply to all of the parties hereto, and to their officers, directors, employees, agents, successors and assigns.

IV.

Aspen Highlands Skiing Corporation, and the Aspen Skiing Corporation, shall continue to independently determine the price, variety and character of all ski lift tickets to be offered by them individually.

V.

Beginning with the 1981-82 ski season, and continuing each ski season thereafter during the term of this Injunction (as set forth by Paragraph VII hereof), the Aspen Skiing Corporation and Aspen Highlands Skiing Corporation shall offer a joint four-area, six-day ski lift ticket under the following terms:

A. Said four-area, six-day ticket shall consist of a coupon booklet substantially identical in format and paper stock to the Ski-the-Summit coupon booklet attached hereto as Exhibit A.

B. Said coupon booklet shall be sold subject to and imprinted with conditions and instructions printed in the inside cover of the coupon booklet, as follows:

1. Coupons are void if detached from book.
2. All coupons are non-transferable.
3. Only one coupon can be used each day from a book.
4. All coupons are void if front or back covers are detached.

5. Retain this coupon book intact until last day's skiing is complete.
6. Not for resale.
7. One coupon per day per area.
8. Coupons good only through last day punched.
9. Book good 6 out of 7 days.
10. Not responsible if lost or stolen.
11. Aspen Skiing Corporation and Aspen Highlands Skiing Corporation are not affiliated with one another.

C. The back cover of the coupon booklet shall be the same as Exhibit A, except it shall also state "Not responsible if lost or stolen."

D. All of the individual coupons in booklets sold by the Aspen Skiing Corporation shall be a uniform color (*e.g.*, blue), and all of the individual coupons in booklets sold by Aspen Highlands Skiing Corporation shall be a different color (*e.g.*, green).

E. All of the individual coupons in booklets sold through any travel agent or tour operator subject to a commission shall be identified by having a white diagonal stripe across each individual coupon. Thus, for example, the booklets sold by Aspen Skiing Corporation directly to consumers would contain blue coupons, and booklets sold by Aspen Skiing Corporation through travel agents or tour operators would contain blue coupons with a diagonal white stripe.

F. The parties shall individually bear all costs associated with the printing and distribution of the respective coupon booklets to be sold by them.

G. The price of the joint four-area, six-day ski lift ticket shall be $120 during the 1981-82 ski season. The price in any later ski seasons covered by this Injunction shall be

determined by the parties, or, if they are unable to mutually agree, by further application to this Court.

H. The parties shall pay commissions of at least 10% of the selling price to travel agents or tour operators through whom said tickets are sold to consumers. However, in the allocation of revenues between the parties as a result of the redemption of a commissionable ticket, said allocation shall be based upon the daily price of said ticket (*i.e.*, $120 ÷ 6 = $20) less a flat 10%. Any commission paid in excess of 10% shall, therefore, be borne by the party paying such commission.

I. Said ticket shall be refundable for the same reasons and on the same terms as ski lift tickets offered by the parties individually, except that:

1. The parties may make refunds on said ticket by mail;
2. The parties may deduct 10% of the selling price of said ticket with respect to refunds on coupon booklets sold to travel agents or tour operators for resale to consumers;
3. Neither party may process refunds on coupon booklets sold by the other party. However, the parties shall offer reasonable assistance to consumers by providing appropriate mail-in refund applications on forms prepared and distributed by the party which sold the coupon booklet; and
4. Refunds will be made on the basis of the highest daily lift ticket price being deducted for each coupon used.

J. The parties shall list this ticket in their area brochures and ticket price schedules, as follows:

"4-area, 6 out of 7 day Coupon Book $120"

The parties are not otherwise obligated to advertise or promote the sale of said ticket.

VI.

This Injunction is not intended and shall not be construed to restrain or limit competition between the Aspen Skiing Corporation and Aspen Highlands Skiing Corporation in the sale and marketing by them of their respective ski areas and such ski lift tickets as they may independently determine to offer.

VII.

This Injunction shall be in effect either for a period of three (3) years from the date of its entry, or until such time as the Little Annie ski area opens for business in Pitkin County, Colorado, under ownership which is independent of the Aspen Skiing Corporation, whichever period is shorter, at which time the Court shall review the circumstances existing at that time to determine whether the terms and conditions of this Injunction should be modified, eliminated or remain the same. Jurisdiction is retained by the Court during the time that this Injunction remains in effect, to enable the parties to apply for such further orders or directions as may be necessary or appropriate to effectuate or modify the provisions hereof, or to enforce compliance herewith.

DATED at Denver, Colorado, this 4th day of August, 1981.

By The Court:

/s/ ZITA L. WEINSHIENK
ZITA L. WEINSHIENK, Judge
United States District Court